

## DIVISION 242

### RULES APPLICABLE TO THE PORTLAND AREA

#### EMPLOYEE COMMUTE OPTIONS PROGRAM

##### **340-242-0010 WHAT IS THE EMPLOYEE COMMUTE OPTIONS PROGRAM?**

- (1) The Employee Commute Options or “ECO” Program requires larger **employers** to provide commute options to encourage **employees** to reduce **auto trips** to the **work site**.
- (2) ECO is one of several strategies included in the Ozone Maintenance Plan for the Portland Air Quality Maintenance Area. The Ozone Maintenance Plan will keep the area in compliance with the federal ozone standard through the year 2006, despite the area experiencing unprecedented growth.

*State effective: 10/14/99; EPA effective: 3/24/2003*

##### **340-242-0020 WHO IS SUBJECT TO ECO?**

ECO applies to employers within the Portland Air Quality Maintenance Area (**AQMA**) with more than 50 employees at a work site. The Portland Air Quality Maintenance Area is defined in Oregon Administrative Rules (OAR) 340-204-0010 and is illustrated in **Figure 1**.

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##### **340-242-0030 WHAT DOES ECO REQUIRE?**

Employers must provide commute options that have the potential to reduce employee commute auto trips by ten percent within three years. Employers must continue to provide commute options that have the potential to achieve and maintain the reduced auto trip rate throughout the life of the ozone maintenance plan (until 2006). Options are available for alternative emission reduction measures, credits for past actions, and exemptions.

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##### **340-242-0040 HOW DOES THE DEPARTMENT ENFORCE ECO?**

Enforcement procedures and civil penalties in OAR, Chapter 340, Division 12 apply. Under OAR 340-012-0050(2), violations of the **ECO rules** are Class Two violations. Failure to achieve a ten percent trip reduction is not a violation; failure to make a good faith effort toward, or prepare and implement a plan designed to achieve, a ten percent trip reduction is a violation. Civil penalties are determined by the penalty matrix under OAR 340-012-0042. Penalties determined from this matrix can range from \$50 to \$10,000 for each day of each violation, but typically range from \$500 to \$2000 for each day of each violation.

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### 340-242-0050 DEFINITIONS OF TERMS USED IN THESE RULES

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to OAR 340-242-0010 through 340-242-0290. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to OAR 340-242-0010 through 340-242-0290.

- (1) “**AQMA**” means the Portland Air Quality Maintenance Area.
- (2) “**Auto Trip**” means a commute trip taken by vehicle to a work site.
- (3) “**Auto Trip Rate**” means the number of commute vehicles arriving at a work site divided by the number of employees that report to the work site.
- (4) “**Baseline Auto Trip Rate**” means the daily average auto trip rate established by the baseline survey.
- (5) “**Baseline Survey**” means the employee survey administered at the beginning of the ECO program, according to the implementation schedule in 340-242-0130, **Table 1**.
- (6) “**Car/Vanpool**” means a motor vehicle occupied by two or more people traveling together for their commute trip that results in the reduction of a minimum of one auto trip.
- (7) “**Compressed Work Week**” means a schedule in which employees work their regularly-scheduled number of hours in fewer days per week or over a number of weeks (for example, a 40-hour, 8 hours per day, Monday through Friday work week is compressed into a 40-hour, 10 hours a day, Monday through Thursday work week.).
- (8) “**Department**” means the Oregon Department of Environmental Quality.
- (9) “**ECO Program**” or “**ECO Rules**” means OAR 340-242-0010 through 340-242-0290.
- (10) “**Employee**” means any person on the employer’s payroll, full or part-time (part time is 80 or more hours per 28-day period), for at least six consecutive months at the same work site, including business owners, associates, partners, and partners classified as professional corporations.
- (11) “**Employer**” means any person, business, educational institution, non-profit agency or corporation, government department or agency or other entity that employs more than 50 employees at a single work site.
- (12) “**Equivalent Emission Reduction**” means a reduction of vehicle emissions, or other sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) emissions, that results in a reduction of VOC and NO<sub>x</sub> emissions equal to the emission reduction resulting from one eliminated auto trip.
- (13) “**Metro**” means the regional government agency, Metropolitan Planning Organization.
- (14) “**New Employer**” means any employer establishing a work site within the Portland AQMA, or any employer within the Portland AQMA that expands employment at a single work site to more than 50 employees, after the effective date of the ECO rules.
- (15) “**Non-Scheduled Work Week**” means a work week with no regular daily scheduled starting or ending time, no scheduled work days, or employees are on-call. This does not include employees working a traditional “8 to 5” job who may work on a flexible schedule.

- (16) “**Target Auto Trip Rate**” means a rate ten percent less than the baseline auto trip rate.
- (17) “**Target Compliance Deadline**” means the date by which employers must demonstrate progress toward achieving and maintaining their target auto trip rate.
- (18) “**Telecommuting**” means the employees perform regular work duties at home, or at a work center closer to home than to work, rather than commuting to work. The employees may telecommute full time, or commute to work on some days and telecommute on others.
- (19) “**Vehicle**” or “**Auto**” means a highway vehicle powered by a gasoline or diesel internal combustion engine with fewer than sixteen adult passenger seating positions.
- (20) “**Work site**” means a property that is owned or leased by an employer or employers under common control, including a temporary or permanent building, or grouping of buildings that are in actual physical contact or separated only by a private or public roadway or other right-of-way.

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### **340-242-0060 SHOULD ALL EMPLOYEES AT A WORK SITE BE COUNTED?**

The count of employees at a work site must include:

- (1) Employees from all shifts, Monday through Friday, during a 24-hour period, averaged over a 12-month period;
- (2) Employees on the employer’s payroll for at least six consecutive months at one work site; and
- (3) Part-time employees assigned to a work site 80 or more hours per 28-day-period; but
- (4) Excludes volunteers, disabled employees (as defined under the Americans with Disabilities Act), employees working on a **non-scheduled work week**, and employees required to use a personal **vehicle** as a condition of employment.

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### **340-242-0070 WHAT ARE THE MAJOR REQUIREMENTS OF ECO?**

To comply with ECO, employers must:

- (1) Conduct a **baseline survey** of employees to establish a **baseline auto trip rate** (or provide documentation of the current auto trip rate that is at least as accurate as a survey would provide);
- (2) Calculate a target auto trip rate by reducing the baseline auto trip rate by 10 percent;
- (3) Submit a registration form as supplied by the **Department**;
- (4) Design and implement a trip reduction strategy that has the potential to achieve the target auto trip rate by the **target compliance deadline** (*see Table 1 for the implementation schedule*), and the potential to maintain the target auto trip rate through 2006;
- (5) Either:
  - (a) Prepare and implement an auto trip reduction plan for each work site and submit the plan to the Department for approval, OR

**NOTE:** Enforcement will be based upon implementing the approved plan, see OAR 340-242-0110.

(b) Provide written notice to the Department of the intent to achieve the target auto trip rate without an approved plan.

**NOTE:** Enforcement will be based on good faith effort, see OAR 340-242-0180 and special requirements in OAR 340-242-0110.

(6) Survey employees annually, report survey findings to the Department, and

**NOTE:** Reporting dates are different for those not submitting a plan, see OAR 340-242-0100.

(7) Continue to implement strategies to achieve or maintain the target auto trip rate through 2006.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0080 WHAT ARE THE REGISTRATION REQUIREMENTS?**

- (1) Employers must submit a registration form to the Department on forms provided by the Department.
- (2) Employers with multiple work sites may submit one application for all work sites.
- (3) The application must be submitted according to the schedule in **Table 1**.
- (4) Baseline survey findings must be submitted with the registration form in the format described on the registration form.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340242-0090 WHAT ARE THE REQUIREMENTS FOR AN EMPLOYEE SURVEY?**

- (1) Employers may use the survey form provided by the Department or an alternate instrument. Any alternate survey instrument must be approved by the Department before use and must provide an opportunity for employees to indicate an interest in a **carpool** matching program;
- (2) The employer must distribute the survey form to all employees and achieve a minimum response rate of 75 percent;
- (3) Employers with more than 400 employees at a work site may survey a statistically valid random sample of employees and must follow the Department's guidelines for random sampling;
- (4) Survey forms must be distributed during the week following a typical work week for the employer and not bordering a holiday;
- (5) The baseline survey must not be distributed to employees earlier than one year before reporting the results to the Department (older baseline surveys can be used to apply for credit, see OAR 340-242-0250);
- (6) Follow-up surveys must not be distributed to employees earlier than 90 days before reporting the results to the Department;
- (7) Employers must report survey findings to the Department annually, according to the schedule in **Table 1**;
- (8) Once an employer achieves the target auto trip rate, the employer may survey every

two years; and

- (9) An alternative method may be substituted for the survey. Alternative methods must be at least as accurate as survey findings and must be approved by the Department (such methods might include counting cars in an employee parking lot or conducting work site entrance verbal surveys).

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### **340-242-0100 SPECIAL REQUIREMENTS FOR EMPLOYERS INTENDING TO COMPLY WITHOUT AN APPROVED PLAN**

- (1) Employers who choose to achieve the target auto trip rate without an approved plan must survey employees 18 months after the baseline survey was conducted;
- (2) Findings from the 18-month survey must be submitted to the Department according to the schedule in **Table 1**;
- (3) If an 18-month survey shows that the employer's progress toward the target auto trip rate is less than one-third of the target trip reduction, the employer must submit an auto trip reduction plan to the Department for approval within 60 days of submitting survey findings to the Department; and
- (4) Following the 18-month survey, employers must survey annually according to the schedule in **Table 1**.

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### **340-242-0110 WHAT IF AN EMPLOYER DOES NOT MEET THE TARGET AUTO TRIP RATE?**

- 1) An employer with an approved plan who has fully implemented its plan yet has not achieved its target **auto trip rate** by the target compliance date, or does not maintain its target rate on annual basis, must submit a revised plan within 60 days following the target compliance date in any given year (according to **Table 1**). If an employer has not fully implemented its plan, the employer is subject to an enforcement action by the Department.
- (2) An employer selecting not to submit a plan who does not achieve its target auto trip rate by the target compliance date (see **Table 1**) must demonstrate that a **good faith effort** was made to achieve the target rate. Requirements for documenting good faith effort are described in 340-242-0180. The employer must also submit a trip reduction plan within 60 days following the target compliance date. If an employer cannot demonstrate that a good faith effort was made, the employer is subject to an enforcement action by the Department.
- (3) An employer will not be required to submit further plan revisions to its initial plan if, after fully implementing two revisions, the target auto trip rate is not reached. The employer must maintain strategies identified in its plan, or revisions to that plan, that resulted in improvements to the auto trip rate.

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### **340-242-0120 HOW WILL EMPLOYERS DEMONSTRATE PROGRESS**

## **TOWARD THE TARGET AUTO TRIP RATE?**

Employers must submit employee survey findings, including a calculated auto trip rate, to the Department. The Department will compare the annually reported auto trip rate with the employer's target auto trip rate.

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## **340-242-0130 WHAT IS THE SCHEDULE EMPLOYERS MUST FOLLOW TO IMPLEMENT ECO?**

The schedule employers must follow to implement the ECO program is detailed in **Table 1**. Implementation is staggered and employer grouping is based on work site zip code. The Department will place any work site located in a zip code not listed in this rule in a group with the most closely associated zip code. An employer with multiple work sites in more than one zip code may follow one schedule for all work sites with approval from the Department.

### **Table 1 IMPLEMENTATION SCHEDULE**

#### **Registration Forms Due**

Group 1 — 11-1-96

Group 2 — 2-1-97

Group 3 — 5-1-97

Group 4 — 8-1-97

#### **Baseline Surveys Due**

Group 1 — 11-1-96

Group 2 — 2-1-97

Group 3 — 5-1-97

Group 4 — 8-1-97

#### **Plans - Notices of Intent To Comply w/o a Plan Due**

Group 1 — 2-1-97

Group 2 — 5-1-97

Group 3 — 8-1-97

Group 4 — 11-1-97

#### **12-Month Surveys Due for Those with a Plan**

Group 1 — 11-1-97

Group 2 — 2-1-97

Group 3 — 5-1-98

Group 4 — 8-1-98

### **18-Month Surveys Due for Those without a Plan**

- Group 1 — 5-1-98
- Group 2 — 8-1-98
- Group 3 — 11-1-98
- Group 4 — 2-1-98

### **Surveys Due for Those with a Plan**

- Group 1 — 11-1-98
- Group 2 — 2-1-99
- Group 3 — 5-1-99
- Group 4 — 8-1-99

### **Initial Target Compliance Date Surveys Due for all Employers**

- Group 1 — 11-1-99
- Group 2 — 2-1-00
- Group 3 — 5-1-00
- Group 4 — 8-1-00

### **Annual Target Compliance Date Surveys Due for all Employers**

- Group 1 — every 11-1 thru 2006
- Group 2 — every 2-1 thru 2006
- Group 3 — every 5-1 thru 2006
- Group 4 — every 8-1 thru 2006

**Group 1** includes: Northeast zip codes: 97024, 97060, 97203, 97211, 97212, 97213, 97217, 97218, 97220, 97227, 97230, 97232;

**Group 2** includes: Southeast zip codes: 97004, 97009, 97015, 97027, 97030, 97045, 97080, 97202, 97206, 97214, 97215, 97216, 97222, 97233, 97236, 97266, 97267;

**Group 3** includes: Southwest zip codes: 97005, 97006, 97007, 97008, 97034, 97035, 97036, 97062, 97068, 97070, 97106, 97113, 97119, 97132, 97140, 97219, 97223, 97224;

**Group 4** includes: Northwest zip codes: 97116, 97123, 97124, 97133, 97201, 97204, 97205, 97207, 97208, 97209, 97210, 97221, 97225, 97229, 97231, 97258.

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### **340-242-0140 HOW SHOULD EMPLOYERS ACCOUNT FOR CHANGES IN WORK FORCE SIZE?**

The target auto trip rate remains constant regardless of changes in work force size. Employers experiencing an annual increase or decrease in the number of employees reporting to a work site must simply maintain the target auto trip rate.

**NOTE:** For example, an employer has 200 employees and 180 autos arriving at the work site. The employer's baseline auto trip rate is 180 autos/200 employees, or .90. The target auto trip rate is .90 minus 10 percent, or .81. The employer's

work force increases to 300 employees. The target auto trip rate remains .81. In order to maintain the target auto trip rate, auto trips to the work site cannot exceed (300 X .81), or 243 trips. Similarly, if the employer's work force decreases to 100 employees, the target auto trip rate remains .81, and auto trips to the work site cannot exceed (100 X .81) or 81 trips.

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### **340-242-0150 HOW CAN AN EMPLOYER REDUCE AUTO COMMUTE TRIPS TO A WORK SITE?**

Employee commute option programs include, but are not limited to:

- (1) Promoting carpool and vanpool programs;
- (2) Offering transit subsidies;
- (3) Establishing **telecommuting** opportunities;
- (4) Offering **compressed work week** schedules;
- (5) Providing an emergency ride home program;
- (6) Sponsoring shuttle buses to and from transit terminals and/or during lunch hours for errands;
- (7) Improving facilities to promote bicycle use;
- (8) Establishing on-site amenities to decrease employees' need for a car at the work site;
- (9) Discontinuing parking subsidies and charging all employees for parking.

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### **340-242-0160 WHAT SHOULD BE INCLUDED IN AN AUTO TRIP REDUCTION PLAN?**

An auto trip reduction plan must include:

- (1) The results of the baseline survey (or comparable documentation);
- (2) Calculation of baseline and target auto trip rates;
- (3) Any employee commute option programs currently in use at the work site;
- (4) New commute options to be implemented at the work site that have the potential to achieve and maintain the target auto trip rate;
- (5) Empirical evidence that the commute option(s) to be offered or supported by the employer have the potential to achieve and maintain the target auto trip rate (employers may reference the Department's report **Alternatives to Single Occupant Vehicle Trips** or provide equivalent documentation);
- (6) Any unique aspects of the business or work site influencing the trip reduction strategies selected;
- (7) A schedule for implementing each of the selected commute option measures;
- (8) Any alternative emission reduction proposals prepared by the employer according to OAR 340-242-0240;
- (9) The name, title, telephone number, and business mailing address of the person designated by the employer as the contact for the work site (contact person does not have to be located at the work site); and a signed statement certifying that the documents and information submitted in the plan are true and correct to the best of that person's knowledge.

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### **340-242-0170 WHEN WILL THE DEPARTMENT ACT ON A SUBMITTED AUTO TRIP REDUCTION PLAN?**

The Department will approve or notify the employer of deficiencies in a submitted auto trip reduction plan, based on the criteria in OAR 340-242-0160, within 90 days or the plan will be automatically approved. The employer will have 30 days to correct the deficiencies and resubmit the plan to the Department. Plan approvals will be documented by letter from the Department to the employer. Employers must submit any subsequent plan modifications to the Department for review and approval. If the employer objects to any condition or limitation in the Department's letter, the employer may request a contested case hearing before the Commission or its authorized representative. Such a request for hearing must be made in writing to the Director and received by the Department within 20 days of the date of mailing of the letter. Any subsequent hearing will be conducted pursuant to the provisions of ORS Chapter 183 and OAR Chapter 340, Division 11.

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### **340-242-0180 WHAT IS A GOOD FAITH EFFORT?**

Employers who choose not to submit a plan and then fail to meet their target auto trip rates must demonstrate that a good faith effort was made to meet the target trip reduction. An employer must demonstrate good faith effort by submitting written documentation of the following:

- (1) Employer established a baseline auto trip rate and corresponding target auto trip rate and conducted follow-up surveys to determine employee commute patterns and progress toward achieving the target trip reduction;
- (2) Employer selected trip reduction strategies that had a reasonable likelihood of success based on documentation in the Department's report **Alternatives to Single Occupant Vehicle Trips** or equivalent documentation (for example, auto trip reduction experience by employers in a comparable region); and
- (3) Employer fully implemented all selected strategies, or their equivalent, on a schedule that would have reasonably allowed the employer to achieve the target auto trip rate by the target compliance deadline.

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### **340-242-0190 HOW DOES THE ECO PROGRAM AFFECT NEW EMPLOYERS, EXPANDING EMPLOYERS AND EMPLOYERS RELOCATING WITHIN THE PORTLAND AQMA?**

- (1) An expanding employer who increases the number of employees at any single work site within the Portland AQMA to more than 50 after the effective date of the ECO rules must comply with the ECO rules. An employer relocating a work site within the Portland AQMA is considered a **new employer** upon relocation and must set a new baseline and target auto trip rate and comply with the ECO rules. Relocating employers may apply for credit for existing trip reductions that carry over to the new

work site. Expanding employers and new employers must meet the requirements of this rule within the following number of days after they become affected employers:

- (a) Survey employees and submit survey findings and a registration form within 90 days;
  - (b) Select strategies that have the potential to meet the target trip reduction and submit a trip reduction plan or notice of intent to reduce trips without an approved plan within 180 days; and
  - (c) Conduct annual follow-up surveys and report findings to the Department within 90 days of surveying.
- (2) An employer affected by this rule may choose to demonstrate compliance through 340-242-0260(5) (*use of area average rate*).

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### **340-242-0200 CAN A NEW OR RELOCATING EMPLOYER COMPLY WITH ECO THROUGH RESTRICTED PARKING RATIOS?**

An employer locating at a work site within the AQMA after the effective date of the ECO rules will be exempt from the ECO rules for that work site if:

- (1) The new work site meets the requirements of the Department's Voluntary Parking Ratio rules (OAR 340-242-0300 through 340-242-0390); OR
- (2) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:
  - (a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; OR
  - (b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.
- (3) An employer must submit this documentation with an exemption application to the Department by the deadline for plan or notice submittal specified in Table 1. Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

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### **340-242-0210 CAN AN EXISTING EMPLOYER COMPLY WITH ECO THROUGH RESTRICTED PARKING RATIOS?**

An employer will be considered to have met the target trip reduction and is exempt from the ECO rules if the employer provides documentation of the following. An employer must submit this documentation with an exemption application to the Department by the

deadline for plan or notice submittal specified in **Table 1**. Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

- (1) Work site is located in an area with maximum parking ratio requirements at least as stringent as the Department's maximum parking ratios (see OAR 340-242-0300 through 340-242-0390);
- (2) Free or subsidized all-day parking is generally unavailable within a one-half mile radius of the work site; and
- (3) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:
  - (a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; OR
  - (b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0220 WHAT IF AN EMPLOYER HAS MORE THAN ONE WORK SITE WITHIN THE PORTLAND AQMA?**

- (1) An employer with more than one work site in the Portland AQMA may average its target trip reduction among those work sites in the AQMA. An employer must survey all included work sites annually. Survey findings may be reported in aggregate or separately.
- (2) One trip reduction plan may be developed for all work sites of an individual employer, but strategies must be selected based on the specific transportation characteristics of each work site.
- (3) Work sites with 50 or fewer employees may be included in the interest of averaging trip reductions among all work sites. Those work sites must then survey according to the schedule in **Table 1** and findings must be included in the employer's report to the Department.

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### **340-242-0230 CAN EMPLOYERS SUBMIT A JOINT PLAN?**

Different employers with work sites located near each other and with common transportation needs may develop a joint trip reduction plan for all affected work sites. The plan must address each work site individually and each employer is individually accountable for meeting all ECO requirements. Each employer must report survey findings for each specific work site, and the ten percent trip reduction target applies to

each employer's work sites. Trip reductions may not be averaged among employers.

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### **340-242-0240 ARE THERE ALTERNATIVES TO TRIP REDUCTION?**

Alternatives to trip reduction include:

- (1) Employers may purchase surplus trip reductions from other employers required to comply with ECO to meet part or all of the target trip reduction. Surplus trips must be documented by survey before sale and must be maintained through the year 2006. The Department must approve proposed transactions prior to finalizing. The Department will confirm surplus trip transactions by letter to both employers.
- (2) Employers may substitute **equivalent emission reductions** to meet their target trip reduction. Equivalent emission reduction proposals must be included in the employer's trip reduction plan or submitted with the notice of intent to comply without an approved plan. In order to receive credit as an equivalent emission reduction, the Department must review and approve proposals before an employer implements the strategy. Employers selecting equivalent emission reduction strategies must meet the following requirements:
  - (a) Employer sufficiently documented emission calculations so that the Department can quantify and verify the reduction;
  - (b) Employer calculated equivalent emissions according to guidelines issued by the Department. The Department must approve any alternate or modified calculation methods;
  - (c) Employer submits, on the same schedule as the annual survey findings, documentation of actual equivalent emissions achieved;
  - (d) Equivalent emission reductions may not be bought or sold between employers for the purpose of meeting the target trip reduction.
- (3) Employers may contribute to an emission reduction fund at an annual rate of \$100 per employee at the work site (see OAR 340-242-0060 to determine count of employees). An employer making partial progress toward the target trip reduction may choose to contribute proportionate to the percentage of the target trip reduction yet to be achieved. The emission reduction fund will be administered through **Metro** for new transit service, local jurisdiction alternative mode projects, and business-based Transportation Management Association (TMA) programs that result in trip reductions. Employers must make annual payments over the compliance period. The amount will be adjusted annually according to the Consumer Price Index.

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### **340-242-0250 WHAT ALTERNATIVES QUALIFY AS EQUIVALENT EMISSION REDUCTIONS?**

Equivalent emission reduction alternatives at the work site include, but are not limited to, the following:

- (1) Use of alternative fueled vehicles (employer or employee vehicles);
- (2) Vehicle scrappage (older high-emitting employee or employer vehicles);
- (3) Forklift replacement (lower emitting technology);
- (4) Lawn mower replacement (may include lawn mowers employees use at home if home is located within the Portland AQMA);

- (5) Motor boat motor replacement (may include motor boats owned by employees who live within the Portland AQMA);
- (6) Reductions in air pollution emissions from non-vehicle sources at the work site;
- (7) Reductions in non-commute vehicle traffic to the work site or within the work site.

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### **340-242-0260 CAN EMPLOYERS GET CREDIT FOR EXISTING TRIP REDUCTION PROGRAMS?**

The Department may grant credits for documented trip reductions that occurred at an employer's work site any time before establishing a baseline auto trip rate. Credits will be granted upon approval by the Department. The Department will approve or deny the employer's request for credit by letter to the employer. If the employer objects to any condition or limitation in that letter, the employer may request a contested case hearing as described in OAR 340-242-0170.

- (1) Employers must demonstrate that pre-existing trip reduction programs resulted in actual trip reductions by providing:
  - (a) A description of the trip reduction programs and how they were implemented;
  - (b) The period of time that the programs have been in place;
  - (c) Survey findings or comparable documentation that demonstrates a ten percent reduction in the auto trip rate for the work site; and
  - (d) Current survey findings or comparable documentation verifying the employer has maintained the reduced auto trip rate.
- (2) Applications for credits must be submitted to the Department with the trip reduction plan or notice of intent to reduce trips without an approved plan, according to **Table 1**.
- (3) Credits will not be discounted and will be granted on a one-for-one basis.
- (4) Trips documented for the purpose of receiving credits may not be bought or sold to other employers for the purpose of meeting the target trip reduction.
- (5) Alternately, an employer may choose to provide documentation that its single occupant vehicle commute rate, at the time of registration, is equal to or less than two standard deviations below the mean rate for the Metro transportation zone which includes the employer's work site. Commute data for Metro's transportation zones is available from the Department.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0270 ARE EXEMPTIONS ALLOWED IF AN EMPLOYER IS UNABLE TO REDUCE TRIPS OR TAKE ADVANTAGE OF ALTERNATE COMPLIANCE OPTIONS?**

- (1) An employer is fully exempt from OAR 340-242-0010 through 340-242-0290 if the employer submits reasonable documentation for each of the following:
  - (a) Work site is located in an area for which:
    - (A) Public transit service during work shift changes is less frequent than thirty minute intervals; or
    - (B) The public transit service point is further than one-half mile from employee's usual parking area; or

- (C) Work shift changes occur between 8:30 p.m. and 5:30 a.m..
- (b) Upon completing the employee survey and providing reasonable promotion for a **carpool** matching program, employees indicating a willingness to car/vanpool cannot be matched within the work site or through Tri-Met's carpool matching database or employee turnover rate is greater than 50 percent per year;
- (c) The nature of employees' work requires them to perform their work at the work site or during specific hours and days, eliminating the possibility of telecommuting or compressed work weeks/hours; and
- (d) No options exist for the employer to achieve equivalent emission reductions at no net annualized cost to the employer (including both capital and operating costs).
- (2) Partial exemptions.
- (a) The Department will grant a partial exemption for that portion of an employer's work force for which sections (1)(a) through (c) of this rule apply;
- (b) The Department will grant a partial exemption for section (1)(d) of this rule in direct proportion to the remaining work trips to be reduced after quantifying all available equivalent emission reductions.
- (3) Employers must submit requests for partial or total exemptions to the Department, on application forms provided by the Department, by the deadline for plan or notice submittal according to **Table 1**. The Department will approve or deny the employer's request for exemption by letter to the employer. If the employer objects to any condition or limitation in that letter, the employer may request a contested case hearing as described in OAR 340-242-0170.
- (4) Employers must renew requests for exemptions every three years.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0280 PARTICIPATION IN THE INDUSTRIAL EMISSION MANAGEMENT PROGRAM**

Employers that donate unused Plant Site Emission Limit (PSEL) to the Department's Industrial Emission Management program (see OAR 340-242-0400 through 340-242-0440) are exempt from the ECO rules for the life of the ozone maintenance plan (2006).

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0290 WHAT KIND OF RECORDS MUST BE KEPT AND FOR HOW LONG?**

Employers must maintain records at the work site or other central location within the nonattainment area for at least three years, and must make those records available to the Department upon request. Records must include:

- (1) The contents and results of employee surveys or other information gathering efforts;
- (2) A full description of all measures and incentives offered to employees and the associated employee responses;
- (3) Other information associated with the development, implementation, evaluation, or modification of the trip reduction program.

*State effective: 10/14/99; EPA effective: 3/24/2003*

## **VOLUNTARY MAXIMUM PARKING RATIO PROGRAM**

### **340-242-0300 WHAT IS THE VOLUNTARY PARKING RATIO PROGRAM?**

The Voluntary Parking Ratio Program encourages property owners to voluntarily locate and design facilities that need less parking by building in a more pedestrian, bicycle and transit friendly manner.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0310 WHO CAN PARTICIPATE IN THE VOLUNTARY PARKING RATIO PROGRAM?**

Any property owner constructing a new development or a re-development of an existing site that adds new building floor area and requires new parking spaces in the Portland Air Quality Maintenance Area (AQMA) for the specific land uses defined below in 340-242-0320.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0320 DEFINITIONS OF TERMS AND LAND USES**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply in OAR 340-242-0300 through 340-242-0390. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies in OAR 340-242-0300 through 340-242-0390.

(1) General Definitions:

(a) "AQMA" means the Portland Air Quality Maintenance Area as defined in OAR 340-204-0010.

(b) "CCTMP" means the Central City Transportation Management Plan as defined by ordinance number 169535 and resolution number 35472, adopted by City of Portland City Council December 6, 1995, effective January 8, 1996.

(c) "Department" means the Department of Environmental Quality.

(d) "Director" means the Director or the Director's designee.

(e) "Employee Commute Options Program" or "Employee Commute Options Rule" means OAR 340-242-0010 through 340-242-0290.

(f) "Gross Floor Area" means the total area expressed in square feet of all floors of a building that include halls, stairwells, elevator shafts, basements, mezzanines or upper floors but excludes structured parking. Gross floor area is measured to the outside surfaces of exterior wall.

(g) "Gross Leasable Area" means total building area expressed in square feet designed for tenant occupancy and exclusive use that includes basements, mezzanines or upper floors, but does not include stairwells, elevator shafts. Gross leasable area is measured to the inside surfaces of exterior walls. Gross leasable area is that area for which tenant pays rent; it is the area that produces income.

(h) "OAR" means Oregon Administrative Rules.

(i) "Parking Ratio Permit" means a permit in letter form issued by the Department, bearing the signature of the Director or designee, that specifies the property owner's requirements under the parking ratio program.

(j) "Parking Ratio Program" means the Voluntary Parking Ratio Program, OAR

340-242-0300 through 340242-0390.

(k) "Parking Space" means any off-street area of space below, above or at ground level, open or enclosed that is used for parking one motor vehicle at a time. If the property owner intends to stack cars (valet parking) on-site and off-site, the total area or areas used for parking must be calculated as parking spaces, not just the striped parking spaces. This does not include handicapped parking spaces officially designated pursuant to the **Americans with Disabilities Act**.

(l) "Property Owner" means individual, corporation, partnership, limited partnership (reflecting the proposed development), association, government, firm or joint stock company who owns title to real property.

(2) Land Use Definitions:

(a) "Bank with Drive-In and Walk-In" means banking facilities for motorists remaining in a vehicle and for someone walking into the building.

(b) "Commercial Retail" means either a free standing store or an integrated group of retail establishments planned, developed and managed as a unit. These retail facilities offer a variety of products, but do not include a separate grocery store.

(c) "Fast-food Restaurant with Drive-In Window" means a fast food restaurant with motor vehicle drive-in window order service.

(d) "General Office" means an office usually housing single or multiple tenants including, but not limited to, professional services; characterized by landscaped office park or campus-type atmosphere; a group of buildings where the tenant space is flexible to house a variety of uses including, but not limited to, start-up companies or small mature companies that require a variety of space, such as research and development, engineering, or biotechnology; or a facility that houses one or more agencies of city, county, state, federal or other governmental unit. These facilities may also include tenant and support services including, but not limited to, banks, restaurants and other small retail support services.

(e) "Light Industrial, Industrial Park, Manufacturing" means an area containing a number of industrial or related facilities such as office, warehouse, research and associated functions, manufacturing and fabrication; facilities that are diversified which may have a large number of small businesses and others with one or two dominant industries; or facilities with features including, but not limited to, craneways, heavy power, grade and/or dock level doors.

(f) "Medical Clinic/Hospital/Dental Clinic" means a facility that provides diagnostic outpatient care and is equipped to provide prolonged in-patient medical care.

(g) "Movie Theater" means indoor cinemas showing motion pictures. Live stage performances are not included in this land use.

(h) "Other Restaurants" means other establishments serving food for immediate consumption that are not classified as fast food with drive-in.

(i) "Place of Worship" means church, synagogue or other religious facility.

(j) "Schools" means a facility attended by students, including senior high school, junior college, technical college and university levels.

(k) "Sports Club and Recreational Facilities" means a facility offering multiple types of fitness activities including, but not limited to, basketball, tennis, racquetball, volleyball and basketball courts, weight training, aerobics, jazzercise, running. The facility may also include a sauna, swimming pool, game rooms

and/or meeting rooms.

(l) "Supermarket" means a retail store selling a complete assortment of food and food preparation materials, household items, and other retail items; may include pharmacies, delicatessens, and snack bars.

(m) "Tennis and Racquetball Courts" means a facility where the predominant activity is tennis courts and/or racquetball courts; it may include exercise facilities.

(n) "Warehouse" means a facility that is primarily devoted to the storage of materials, but may also include some office and maintenance areas.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0330 HOW DOES A PROPERTY OWNER COMPLY WITH THE VOLUNTARY PARKING RATIO PROGRAM?**

A property owner complies by building no more than the number of parking spaces specified by maximum parking ratios in OAR 340-242-0390 and obtaining a Parking Ratio Permit from the Department.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-2420-0340 WHAT ARE THE INCENTIVES FOR COMPLYING WITH THE VOLUNTARY PARKING RATIO PROGRAM?**

- (1) Employers in the development receive an exemption from the Employee Commute Options program in OAR 340-242-0010 through OAR 340-242-0290.
- (2) Property owners who require other air and water permits from the Department receive priority permit processing.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340242-0350 WHY DO I NEED A PARKING RATIO PERMIT?**

- (1) The parking ratio permit formally documents the agreement with the Department to construct parking within the maximum parking ratio and it provides an enforcement mechanism if the property owner builds more parking without the Department's approval.
- (2) The parking ratio permit formally exempts applicable employers from the Employee Commute Options rule requirements.
- (3) The parking ratio permit formally provides priority permit processing for other air and water permits from the Department.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0360 WHAT IS REQUIRED TO OBTAIN A PARKING RATIO PERMIT?**

Any property owner who chooses to limit construction of parking facilities at its site must submit the following information:

- (1) A completed permit application form;

- (2) Identification of the proposed land uses in OAR 340-242-0320;
- (3) A map showing the location of the site;
- (4) A site plan showing the location of the parking and the total number of parking spaces proposed;
- (5) Quantification of the gross leasable area and gross floor area of the buildings proposed for the site and the associated parking ratio;
- (6) Facts about design and location features that will allow the facility to meet the trip demand with less parking. This can be documented by completing the Department's Parking Ratio Checklist or providing similar documentation.

*State effective: 10/14/99; EPA effective: 3/24/2003*

**340-242-0370 HOW IS THE PARKING RATIO PROGRAM ENFORCED?**

- (1) A Parking Ratio Permit is a written permit in letter form issued by the Department bearing the signature of the Director or his/her designee.
- (2) The general permitting provisions of Oregon Administrative Rules, Chapter 340, Division 14 apply (issuance, renewal, denial, suspension), except that OAR 340-014-0025 (public notice requirement) does not apply.
- (3) An employer is no longer exempt from the ECO rule requirements if the property owner fails to comply with the terms of the Parking Ratio letter permit.

*State effective: 10/14/99; EPA effective: 3/24/2003*

**340-242-0380 WHEN WILL THE DEPARTMENT ACT ON A SUBMITTED PERMIT APPLICATION?**

- (1) The Department will notify the applicant within 15 days of filing an application if further information is needed or if the application is complete.
- (2) The Department will grant or deny a letter permit within 45 days of receiving a complete application.

*State effective: 10/14/99; EPA effective: 3/24/2003*

**340-242-0390 WHAT ARE THE APPLICABLE PARKING RATIOS?**

**TABLE 1.**

**DEPARTMENT OF ENVIRONMENTAL QUALITY  
VOLUNTARY MAXIMUM PARKING RATIOS FOR THE PORTLAND AQMA**

Parking ratios are based on spaces per 1,000 sqft GLA means gross leasable area  
GFA means gross floor area

**CCTMP Areas: Downtown parking sectors 1-6, University District and River District parking sectors 3-5 of the CCTMP**

Bank with Drive-In: River District parking sectors 3-5 — 4.3 (gfa) Bank with Drive-In is a prohibited land use in Downtown sectors 1-6, University District.

Bank with Walk-In — 1.0-2.0\* (gfa)  
 Place of Worship— .25\*(gfa)  
 Commercial Retail\*\* — 1.0-2.0\* (gfa)  
 Fast Food with Drive Thru: River District parking sectors 3-5 — 9.9 (gla) Fast Food with Drive Thru is a prohibited land use in Downtown sectors 1-6, University District.  
 Other Restaurants — 1.0-2.0\* (gfa)  
 General Office — .7-2.0\* (gfa)  
 Light Industrial, Industrial Park, Manufacturing — .7 (gfa)  
 Medical & Dental — .07-2.0\* (gfa)  
 Movie Theater — .25 (gfa)  
 Schools — 1.0-2.0\* (gfa)  
 Sports Club & Recreational Facility — 1.0-2.08 (gfa)  
 Supermarket\*\*— 1.0-2.0\* (gfa)  
 Tennis & Racquetball Court — 1.0-2.0\* (gfa)  
 Warehouse — .7 (gfa) This parking ratio applies to all sizes of warehouses

**CCTMP Areas: Central Eastside parking sectors 2 & 3, Goose Hollow and Lloyd District of the CCTMP**

Bank with Drive-In: Central Eastside parking sectors 2 & 3 and Lloyd District — 4.3 (gla) Bank with Drive-In is a prohibited land use in Goose Hollow.  
 Bank with Walk-In — 4.3 (gla)  
 Place of Worship — .5 (gfa)  
 Commercial Retail\*\* — 4.1 (gfa)  
 Fast Food with Drive-Thru: Central Eastside parking sectors 2 & 3 and Lloyd District — 9.9 (gla) Fast Food with Drive Thru is a prohibited land use in Goose Hollow.  
 Other Restaurants — 15.3 (gla)  
 General Office — 2.0-2.5 (gfa)  
 Light Industrial, Industrial Park, Manufacturing — 1.6 (gfa)  
 Medical & Dental — 3.9 (gla)  
 Movie Theater — .3 (spaces per number of seats)  
 Schools — .2 (spaces per number of students & staff)  
 Sports Club & Recreational Facility — 4.3 (gla)  
 Supermarket\*\* — 2.9 (gla)  
 Tennis & Racquetball Court — 1.0 (gla)  
 Warehouse — .3 (gla) This parking ratio applies to warehouses that are greater than 150,00 sq. ft.

**CCTMP Areas: Lower Albina, North Macadam, Central Eastside parking sectors 1, 4-6 and River District 1 & 2 of the CCTMP**

Bank with Drive-In — 4.3 (gla)  
 Bank with Walk-In — 4.3 (gla)

Place of Worship — .5 (gfa)  
 Commercial Retail\*\* — 4.1 (gfa)  
 Fast Food with Drive-Thru — 9.9 (gla)  
 Other Restaurants — 15.3 (gla)  
 General Office — 2.7 (gla)  
 Light Industrial, Industrial Park, Manufacturing — 1.6 (gfa)  
 Medical & Dental — 3.9 (gla)  
 Movie Theater— .3 (spaces per number of seats)  
 Schools — .2 (spaces per number of students & staff)  
 Sports Club & Recreational Facility— 4.3 (gla)  
 Supermarket\*\* — 2.9 (gla)  
 Tennis & Racquetball Court — 1.0 (gla)  
 Warehouse — .3 (gla) This parking ratio applies to warehouses that are greater than 150,000 sq. ft.

**Outside CCTMP: Areas outside of CCTMP areas, but inside AQMA boundary**

Bank with Drive-In — 4.3 (gla)  
 Bank with Walk-In — 4.3 (gla)  
 Place of Worship — .5 (gfa)  
 Commercial Retail\*\*— 4.1 (gfa)  
 Fast Food with Drive-Thru — 9.9 (gla)  
 Other Restaurants — 15.3 (gla)  
 General Office — 2.7 (gla)  
 Light Industrial, Industrial Park, Manufacturing — 1.6 (gfa)  
 Medical & Dental — 3.9 (gla)  
 Movie Theater — .3 (spaces per number of seats)  
 Schools — .2 (spaces per number of students & staff)  
 Sports Club & Recreational Facility — 4.3 (gla)  
 Supermarket\*\* — 2.9 (gla)  
 Tennis & Racquetball Court — 1.0 (gla)  
 Warehouse — .3 (gla) This parking ratio applies to warehouses that are greater than 150,000 sq. ft.

Note: \*See parking ratios for specific parking sectors in Central City Transportation Management Plan (CCTMP) adopted by the Portland City Council December 6, 1995.

Note: \*\*See the CCTMP for definition of the land uses Commercial Retail and Supermarket that are located in the CCTMP.

*State effective: 10/14/99; EPA effective: 3/24/2003*

**INDUSTRIAL EMISSION MANAGEMENT PROGRAM**

### **340-242-0400 APPLICABILITY**

(1) OAR 340-242-0420 through 340-242-0440 apply to all sources that emit VOC and NO<sub>x</sub> in within the boundaries of the Portland Air Quality Maintenance Area (AQMA), including the following and to the following additional sources:

(a) VOC and NO<sub>x</sub> sources with a PSEL of 100 tons per year or greater within 25 miles of the Portland AQMA are subject to OAR 340-030-0720; and

(b) VOC and NO<sub>x</sub> sources that are new major sources or major modifications within 30 kilometers of the Portland AQMA are subject to OAR 340-242-0430 and 340-242-0440.

(2) OAR 340-242-0430 and 340-242-0440 apply to new major sources and major modifications that emit CO within the Portland Metro Area, including new major sources and major modifications outside the Portland Metro Area that have a significant air quality impact within this area.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0410 DEFINITION OF TERMS**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply in OAR 340-242-0400 through 340-242-0440. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies in OAR 340-242-0400 through 340-242-0440.

(1) “**PSEL**” means the Plant Site Emission Limit of an individual air pollutant specified in an Air Contaminant Discharge Permit or Title V permit issued to a source by the Department, pursuant to OAR 340 division 216 or 218.

(2) “**Unused PSEL**” means the difference between a source’s actual emissions and its permitted level or PSEL in 1990 or 1992, whichever is lower, as determined through the Department’s emission inventory data.

(3) “**Unused PSEL Donation Source**” means any source that voluntarily returns to the Department unused PSEL, as part of the Unused PSEL Donation Program in OAR 340-242-0420.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0420 UNUSED PSEL DONATION PROGRAM**

(1) This program encourages owners or operators of VOC and NO<sub>x</sub> sources identified in OAR 340-242-0400(1) to donate unused PSEL to the Department. Under this program, donations can be either permanent or temporary.

(2) VOC sources donating at least 35 percent of their unused PSEL and NO<sub>x</sub> sources donating at least 50 percent of their unused PSEL will receive the following incentives and considerations from the Department for participating in this program:

(a) Exemption from the Employee Commute Options (ECO) Program in OAR 340-242-0010 through 340-242-0290 for the duration of the Portland Ozone Maintenance plan;

(b) Priority permit processing for any required air quality permit;

(c) In accordance with OAR 340-242-0430 and 340-242-0440(1), priority use of

up to 50 percent of any remaining growth allowance. This applies only to sources making permanent donations, pursuant to section (3) of this rule; and

(d) Other considerations may be added to the donation agreement on a case-by-case basis, consistent with the Department's rules and statutes.

(3) The Department will adjust the PSEL of sources providing permanent donations to reflect the emissions donated. Permanent donations will result in adjustment to the source's baseline emission rate and PSEL, consistent with the definition of "major modification" under OAR 340-200-0020 and changes to PSELs required by rule under OAR 340-222-0040.

(4) Temporary donations of unused PSEL must be for a minimum of five years for VOC and four years for NO<sub>x</sub>. The Department will adjust the PSEL of sources providing temporary donations to reflect the time period and emissions donated. Any source that desires a return of any temporary donation before the end of the donation period must obtain written approval from the Department. Approval will be granted only if the Department determines that excess temporary donations exist. Such approval will disqualify the source from receiving the incentives listed in section (2) of this rule.

(5) Sources participating in this program must enter into a donation agreement with the Department that identifies the commitments of both parties. Any such agreement is legally binding and enforceable.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0430 INDUSTRIAL GROWTH ALLOWANCES**

(1) This rule establishes industrial growth allowances for sources identified in OAR 340-242-0400. The amount of each growth allowance that is available is defined in the **State Implementation Plan** and is on file with the Department.

(2) The owner or operator of a proposed new major source or major modification emitting VOCs, NO<sub>x</sub>, or CO may obtain a portion of the respective growth allowance pursuant to OAR 340-242-0440.

(3) If no emissions remain in the respective growth allowance, the owner or operator of the proposed major source or major modification shall provide offsets for CO emissions at a 1 to 1 ratio, and for VOC and NO<sub>x</sub> emissions at a 1.1 to 1 ratio (i.e., demonstrate a 10% new reduction).

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0440 Industrial Growth Allowance Allocation**

(1) The owner or operator of a proposed new major source or major modification emitting VOCs, NO<sub>x</sub>, or CO, as identified in OAR 340-242-0400, may obtain a portion of any remaining emissions in the respective growth allowance based on the following conditions:

(a) Access is on a first-come-first-served basis, based on the submittal date of a complete permit application;

(b) Unused PSEL donation sources that meet the donation criteria specified in OAR 340-242-0420(2) have priority access to their respective growth allowance as a "tie-

breaker" over non-donation sources; and

(c) No single source may receive an emissions allocation of more than 50% of any remaining growth allowance, or up to 10 tons per year, whichever is greater. On a case-by-case basis, the Environmental Quality Commission may approve an emissions allocation of greater than 50% upon consideration of the following:

(A) Information submitted by the source to the Department justifying its request for exceeding the 50% emissions allocation, based on significant economic, employment, or other benefits to the Portland area that will result from the proposed new major source or major modification;

(B) Information provided by the Department on other known new major sources or major modifications seeking an emissions allocation from the same growth allowance; and

(C) Other relevant information submitted by the source or the Department.

(2) To avoid jeopardizing maintenance of the ozone standard during the interim years of the plan, the Department will allocate only a portion of the VOC and NO<sub>x</sub> growth allowances each year. The Department will track the use of emissions from the growth allowances and will notify unused PSEL donation sources by mail if either growth allowance is reduced by 50 percent. The amount of the growth allowance that can be allocated each year is identified in Section 4.50 of the State Implementation Plan (SIP), which is on file with the Department.

(3) The amount of the CO growth allowance that can be allocated is identified in the Portland Area Carbon Monoxide Maintenance Plan, Section 4.58 of Volume 2 of the State Implementation Plan on file with the Department.

[NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040]

*State effective: 12/15/04; EPA effective: 2/23/2006*

## **GASOLINE VAPORS FROM GASOLINE TRANSFER AND DISPENSING OPERATIONS**

### **340-242-0500 PURPOSE AND APPLICABILITY**

(1) Gasoline vapors contribute to the formation of ozone. OAR 340-242-0500 through 340-242-0520 require the control of gasoline vapors from gasoline transfer and dispensing operations.

(2) OAR 340-242-0500 through 340-242-0520 apply to gasoline dispensing facilities located within Clackamas, Multnomah and Washington Counties.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0510 DEFINITIONS**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply in OAR 340-

242-0500 through 340-242-0520. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies in OAR 340-242-0500 through 340-242-0520.

- (1) "Equivalent control" means the use of alternate operational and/or equipment controls for the reduction of gasoline vapor emissions, that have been approved by the Department, such that the aggregate emissions of gasoline vapor from the facility do not exceed those from the application of defined reasonably available control technology.
- (2) "Gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds per square inch (28 kilopascals) or higher, used as a motor fuel.
- (3) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle, boat, or airplane gasoline tanks from stationary storage tanks.
- (4) "Annual throughput" means the amount of gasoline transferred into or dispensed from a gasoline dispensing facility during 12 consecutive months.
- (5) "Stage I vapor collection system" means a system where gasoline vapors are forced from a tank into a vapor-tight holding system or vapor control system through direct displacement by the gasoline being loaded.
- (6) "Stage II vapor collection system" means a system where at least 90 percent, by weight, of the gasoline vapors that are displaced or drawn from a vehicle fuel tank during refueling are transferred to a vapor-tight holding system or vapor control system.
- (7) "Substantially modified" means a modification of an existing gasoline-dispensing facility which involves the addition of one or more new stationary gasoline storage tanks or the repair, replacement or reconditioning of an existing tank.
- (8) "Vapor control systems" means a system that prevents emissions to the outdoor atmosphere from exceeding 4.7 grains per gallon (80 grams per 1,000 liters) of petroleum liquid loaded.

*State effective: 10/14/99; EPA effective: 3/24/2003*

### **340-242-0520 GENERAL PROVISIONS**

- (1) Notwithstanding the requirements of OAR 340-232-0070, no person shall transfer or allow the transfer of gasoline into storage tanks, at gasoline-dispensing facilities located in Clackamas, Multnomah or Washington Counties, whose annual throughput exceeds 120,000 gallons, unless the storage tank is equipped with:
  - (a) A stage I vapor collection system consisting of a vapor-tight return line from the storage tank, or its vent, to the gasoline transport vehicle;
  - (b) A properly installed on-site vapor control system connected to a vapor collection system; or
  - (c) An equivalent control system.
- (2) A stage II vapor collection system is not required at gasoline-dispensing facilities that are not subject to the stage I requirements of this section.
- (3) No owner and/or operator of a gasoline-dispensing facilities shall transfer or allow the transfer of gasoline into a motor vehicle fuel tank at gasoline-dispensing facilities located in Clackamas, Multnomah or Washington Counties whose annual throughput exceeds 600,000 gallons, unless the gasoline-dispensing facility is equipped with a stage II vapor collection system which must be approved by the Department before it

is installed.

**[NOTES:**

-1- Underground piping requirements are described in OAR **340-150-001** through **340-150-003** and **40 CFR 280.20(d)**. Systems installed according to American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System" or Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems" or American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System" are considered approved systems.

-2- Above-ground stage II equipment requirements are based on systems recently approved in other states with established stage II program. See the Oregon Department of Environmental Quality, Air Quality Division, for the list of approved equipment. Any other proposed equivalent systems must be submitted to the Department of Environmental Quality, Air Quality Division, for approval before installation.]

- (4) Owners and/or operators of gasoline storage tanks, gasoline transport vehicles and gasoline-dispensing facilities subject to stage I or stage II vapor collection requirements must:
  - (a) Install all necessary stage I and stage II vapor collection and control systems, and make any modifications necessary to comply with the requirements;
  - (b) Provide adequate training and written instructions to the operator of the affected gasoline-dispensing facility and the gasoline transport vehicle;
  - (c) Replace, repair or modify any worn or ineffective component or design element to ensure the vapor-tight integrity and efficiency of the stage I and stage II vapor collection systems; and
  - (d) Connect and ensure proper operation of the stage I and stage II vapor collection systems whenever gasoline is being loaded, unloaded or dispensed.
- (5) Approval of a stage I or stage II vapor collection system by the Department does not relieve the owner and/or operator of the responsibility to comply with other applicable codes and regulations pertaining to fire prevention, weights and measures and safety matters.
- (6) Regarding installation and testing of piping for stage I and stage II vapor collection systems:
  - (a) Piping shall be installed in accordance with standards in OAR 340 Division 150;
  - (b) Piping shall be installed by a licensed installation service provider pursuant to OAR 340 Division 160; and
  - (c) Piping shall be tested prior to being placed into operation by an installation or tank tightness testing service provider licensed pursuant to OAR 340 Division 160.
- (7) Owners and/or operators of gasoline-dispensing facilities subject to stage II vapor collection requirements must obtain and maintain a current stage II vapor collection permit from the Department. This permit shall be displayed or kept on file at the facility:
  - (a) Persons applying for this permit for any time period beginning after December 31, 1999 shall be subject to a biennial fee of \$200;
  - (b) The Department may issue stage II vapor collection permits for up to 10 years;
  - (c) Persons applying for a new permit with an effective date beginning before

December 31, 1999 or in an odd numbered year shall pay the annual fee of \$100 and then will be billed for the biennial fee for the next biennial period;

(d) Fees shall be paid at the time of application and by December 1 in odd numbered years for the next biennial period.

(8) When a facility changes ownership, the new owner shall obtain a new stage II vapor collection permit, as described in section (7) of this rule above, within 60 days of the change of ownership.

(9) Persons subject to this rule shall apply for a renewal stage II vapor collection permit not less than 60 days prior to the expiration date of the existing permit. The biennial fee shall be included with the application for renewal.

[NOTE: Test methods are based on methods used in other states with established stage II programs. See the Oregon Department of Environmental Quality, Air Quality Division, for copies of the approved test methods.]

*State effective: 10/14/99; Effective: 3/24/2003:*

## **MOTOR VEHICLE REFINISHING**

### **340-242-0600 APPLICABILITY**

OAR 340-242-0600 through 340-242-0630 apply to any person who owns, leases, operates or controls a motor vehicle refinishing facility in the Portland AQMA.

*State effective: 10/14/99; Effective: 3/24/2003:*

### **340-242-0610 DEFINITIONS**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply in OAR 340-242-0600 through 340-242-0630. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies in OAR 340-242-0600 through 340-242-0630.

- (1) "Department" means the Oregon Department of Environmental Quality.
- (2) "High Volume, Low Pressure Spray", or "HVLP" means equipment used to apply coatings with a spray device which operates at a nozzle air pressure between 0.1 and 10 pounds per square inch gravity (psig).
- (3) "Motor Vehicle" means a vehicle that is self-propelled or designed for self-propulsion as defined in ORS 801.360.
- (4) "Motor Vehicle Refinishing" means the application of surface coating to on-road motor vehicles or non-road motor vehicles, or their existing parts and components, except Original Equipment Manufacturer (OEM) coatings applied at manufacturing plants.
- (5) "Motor Vehicle Refinishing Coating" means any coating designed for, or represented by the manufacturer as being suitable for motor vehicle refinishing.
- (6) "Motor Vehicle Refinishing Facility" means a location at which motor vehicle refinishing is performed.
- (7) "Non-Road Motor Vehicle" means any motor vehicle other than an on-road motor vehicle. "Non-Road Motor Vehicle" includes, but is not limited to, fixed load vehicles, farm tractors, farm trailers, all-terrain vehicles, and golf carts as these vehicles are defined in ORS Chapter 801.
- (8) "On-Road Motor Vehicle" means any motor vehicle which is required to be

registered under ORS 803.300 or exempt from registration under ORS 803.305(5), 803.305(6), or 803.305(15) through 803.305(19). "On-Road Motor Vehicle" includes, but is not limited to: passenger cars, trucks, vans, motorcycles, mopeds, motor homes, truck tractors, buses, tow vehicles, trailers other than farm trailers, and camper shells.

- (9) "Person" means the federal government, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever.
- (10) "Portland Air Quality Maintenance Area" or "Portland AQMA" is defined in OAR 340-204-0010. (The Portland AQMA includes portions of Clackamas, Multnomah and Washington Counties.)
- (11) "Public Highway" means every public way, road, street, thoroughfare and place, including bridges, viaducts and other structures open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.
- (12) "Vehicle" means any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means.
- (13) "Volatile Organic Compound" or "VOC" means those compounds of carbon defined in OAR 340-022-0102.

*State effective: 10/14/99; Effective: 3/24/2003:*

### **340-242-0620 REQUIREMENTS FOR MOTOR VEHICLE REFINISHING IN PORTLAND AQMA**

Except as provided in section (3) of this rule, persons performing motor vehicle refinishing of on-road motor vehicles within the Portland AQMA shall:

- (1) Clean any spray equipment, including paint lines, in a device which:
  - (a) Minimizes solvent evaporation during the cleaning, rinsing, and draining operations;
  - (b) Recirculates solvent during the cleaning operation so the solvent is reused; and
  - (c) Collects spent solvent to be available for proper disposal or recycling; and
- (2) Apply motor vehicle refinishing coatings by one of the following methods:
  - (a) High Volume Low Pressure spray equipment, operated and maintained in accordance with the manufacturer's recommendations;
  - (b) Electrostatic application equipment, operated and maintained in accordance with the manufacturer's recommendations;
  - (c) Dip coat application;
  - (d) Flow coat application;
  - (e) Brush coat application;
  - (f) Roll coat application;
  - (g) Hand-held aerosol cans; or
  - (h) Any other coating application method which can be demonstrated to effectively control VOC emissions, and which has been approved in writing by the Department.
- (3) This rule shall not apply to any person who performs motor vehicle refinishing without compensation, and who performs refinishing on two or fewer on-road motor vehicles, or portions thereof, in any calendar year.

*State effective: 10/14/99; Effective: 3/24/2003:*

## **340-242-0630 INSPECTING AND TESTING REQUIREMENTS**

The owner or operator of any facility subject to OAR 340-242-0600 through 340-242-0630 shall, at any reasonable time, make the facility available for inspection by the Department.

*State effective: 10/14/99; Effective: 3/24/2003:*

## **SPRAY PAINT**

### **340-242-0700 APPLICABILITY**

OAR 340-242-0700 through 340-242-0750 apply to any manufacturer, distributor, retailer or commercial applicator of spray paint for sale or use in the Portland AQMA.

*State effective: 10/14/99; Effective: 3/24/2003:*

### **340-242-0710 DEFINITIONS**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply in OAR 340-242-0700 through 340-242-0750. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies in in OAR 340-242-0700 through 340-242-0750.

- (1) "Adhesive" means a product used to bond one surface to another.
- (2) "Anti-Static Spray" means a product used to prevent or inhibit the accumulation of static electricity.
- (3) "Art Fixative or Sealant" means a clear coating, including art varnish, workable art fixative, and ceramic coating, which is designed and labeled exclusively for application to paintings, pencil, chalk, or pastel drawings, ceramic art pieces, or other closely related art uses, to provide a final protective coating or to fix preliminary stages of art work while providing a workable surface for subsequent revisions.
- (4) "ASTM" means the American Society for Testing and Materials.
- (5) "Auto Body Primer" means an automotive primer or primer surfacer coating designed and labeled exclusively to be applied to a vehicle body substrate for the purpose of corrosion resistance and building a repair area which can be sanded to a smooth condition after drying.
- (6) "Automotive Bumper and Trim Product" means a product, including adhesion promoters and chip sealants, designed and labeled exclusively to repair and refinish automotive bumpers and plastic trim parts.
- (7) "Automotive Underbody Coating" means a flexible coating which contains asphalt or rubber and is labeled exclusively for use on the underbody of motor vehicles to resist rust, abrasion and vibration, and to deaden sound.
- (8) "Aviation Propeller Coating" means a coating designed and labeled exclusively to provide abrasion resistance and corrosion protection for aircraft propellers.
- (9) "Aviation or Marine Primer" means a coating designed and labeled exclusively to meet federal specification TT-P-1757.
- (10) "Belt Dressing" means a product applied on auto fan belts, water pump belting, power transmission belting, industrial equipment belting, or farm machinery belting to prevent slipping, and to extend belt life.

- (11) “Cleaner” means a product designed and labeled primarily to remove soil or other contaminants from surfaces.
- (12) “Clear Coating” means a coating which is colorless, containing resins but no pigments, except flattening agents, and is designed and labeled to form a transparent or translucent solid film.
- (13) “Coating Solids” means the nonvolatile portion of a spray paint, consisting of the film forming ingredients, including pigments and resins.
- (14) “Complying spray paint” means a spray paint which complies with the VOC content limits in OAR 340-242-0720.
- (15) “Consumer” means any person who purchases or acquires any spray paint for personal, family, or household use. Persons acquiring a spray paint product for resale are not considered consumers of that product.
- (16) “Commercial Applicator” means any person who purchases, acquires, applies, or contracts for the application of spray paint for commercial, industrial or institutional uses, or any person who applies spray paint in the course of an activity from which compensation is derived.
- (17) “Corrosion Resistant Brass, Bronze, or Copper Coating” means a clear coating formulated and labeled exclusively to prevent tarnish and corrosion of uncoated brass, bronze or copper metal surfaces.
- (18) “Department” means the Oregon Department of Environmental Quality.
- (19) “Distributor” means any person who sells or supplies spray paint for the purposes of resale or distribution in commerce. “Distributor” includes activities of a self-distributing retailer related to the distribution of products to individual retail outlets. “Distributor” does not include manufacturers except for a manufacturer who sells or supplies spray paint products directly to a retail outlet. “Distributor” does not include consumers.
- (20) “Dye” means a product containing no resins which is used to color a surface or object without building a film.
- (21) “Electrical Coating” means a coating designed and labeled to be used exclusively to coat electrical components such as electric motor windings to provide electrical insulation or corrosion protection.
- (22) “Enamel” means a coating which cures by chemical cross-linking of its base resin and is not resolvable in its original solvent.
- (23) “Engine Paint” means a coating designed and labeled exclusively as such, which is used exclusively to coat engines and their components.
- (24) “Environmental Protection Agency” or “EPA” means the United States Environmental Protection Agency.
- (25) “Exact Match Finish, Automotive” means a topcoat which meets all of the criteria in subsections (a) through (c) of this section:
- (a) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied automotive coating during the touch-up of automobile finishes;
  - (b) The product is labeled with the original equipment manufacturer’s name for which it was formulated; and
  - (c) The product is labeled with one of the following:
    - (A) The original equipment manufacturer’s (OEM) color code;
    - (B) The color name; or
    - (C) Other designation identifying the specific OEM color to the purchaser.
  - (d) Notwithstanding subsections (a) through (c) of this section, automotive clear

coatings designed and labeled exclusively for use over automotive exact match finishes to replicate the original factory applied finish shall be considered to be automotive exact match finishes.

- (26) "Exact Match Finish, Engine Paint" means a coating which meets all of the criteria in subsections (a) through (c) of this section:
- (a) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied engine paint;
  - (b) The product is labeled with the original equipment manufacturer's name for which it was formulated; and
  - (c) The product is labeled with one of the following:
    - (A) The original equipment manufacturer's (OEM) color code;
    - (B) The color name; or
    - (C) Other designation identifying the specific OEM color to the purchaser.
- (27) "Exact Match Finish, Industrial" means a coating which meets all of the criteria in sub-sections (a) through (c) of this section:
- (a) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied industrial coating during the touch-up of manufactured products;
  - (b) The product is labeled with the original equipment manufacturer's name for which it was formulated; and
  - (c) The product is labeled with one of the following:
    - (A) The original equipment manufacturer's (OEM) color code;
    - (B) The color name; or
    - (C) Other designation identifying the specific OEM color to the purchaser.
- (28) "Exempt compounds" means compounds of carbon specifically excluded from the definition of VOC.
- (29) "Flat Paint Product" means a coating which, when fully dry, registers specular gloss less than or equal to 15 on an 85° gloss meter, or less than or equal to 5 on a 60° gloss meter, or which is labeled as a flat coating.
- (30) "Flatting Agent" means a compound added to a coating to reduce the gloss of the coating without adding color to the coating.
- (31) "Floral Spray" means a coating designed and labeled exclusively for use on fresh flowers, dried flowers, or other items in a floral arrangement for the purpose of coloring, preserving or protecting their appearance.
- (32) "Fluorescent Coating" means a coating labeled as such which converts absorbed incident light energy into emitted light of a different hue.
- (33) "Glass Coating" means a coating designed and labeled exclusively to be applied to glass or other transparent material, to create a soft, translucent light effect, or to create a tinted or darkened color while retaining transparency.
- (34) "Ground/Traffic Marking Coating" means a coating designed and labeled exclusively to be applied to dirt, gravel, grass, concrete, asphalt, warehouse floors, or parking lots. Such coatings must be in a container equipped with a valve and sprayhead designed to direct the spray downward when the can is held in an inverted position.
- (35) "High Temperature Coating" means a coating, excluding engine paint, which is designed and labeled exclusively for use on substrates which will, in normal use, be subjected to temperatures in excess of 400° Fahrenheit.

- (36) "Hobby/Model/Craft Coating" means a coating which is designed and labeled exclusively for hobby applications and is sold in aerosol containers of 6 ounces in weight or less.
- (37) "Ink" means a fluid or viscous substance used in the printing industry to produce letters, symbols or illustrations, but not to coat an entire surface.
- (38) "Lacquer" means a thermoplastic film-forming finish dissolved in organic solvent, which dries primarily by solvent evaporation, and is resoluble in its original solvent.
- (39) "Layout Fluid" or "Toolmaker's Ink" means a coating designed and labeled exclusively to be sprayed on metal, glass or plastic, to provide a glare-free surface on which to scribe designs, patterns or engineering guide lines prior to shaping the piece.
- (40) "Leather Preservative" means a leather treatment material applied exclusively to clean, condition or preserve leather.
- (41) "Lubricant" means a substance such as oil, petroleum distillates, grease, graphite, silicone, lithium, etc., that is applied to surfaces to reduce friction, heat, or wear when applied between surfaces.
- (42) "Manufacturer" means the company, firm or establishment which is listed on the product container or package. If the product container or package lists two companies, firms or establishments, the manufacturer is the party which the product was "manufactured for" or "distributed by", as noted on the product container or package.
- (43) "Marine Spar Varnish" means a coating designed and labeled to be exclusively used as a protective sealant for marine wood products.
- (44) "Maskant" means a coating applied directly to a component to protect surfaces during chemical milling, anodizing, aging, bonding, plating, etching, or other chemical operations.
- (45) "Metallic Coating" means a topcoat which contains at least 0.5 percent by weight elemental metallic pigment in the formulation, including propellant, and is labeled as "metallic", or with the name of a specific metallic finish such as "gold", "silver", or "bronze".
- (46) "Mold Release" means a coating applied to molds to prevent products from sticking to mold surfaces.
- (47) "Multi-Component Kit" means a spray paint system which requires the application of more than one component, (e.g. foundation coat and top coat), where both components are sold together in one package.
- (48) "Noncomplying spray paint" means a spray paint which does not comply with the VOC content limits in OAR 340-242-0720.
- (49) "Non-Flat Paint Product" means a coating which, when fully dry, registers a specular gloss greater than 15 on an 85° gloss meter or greater than 5 on a 60° gloss meter.
- (50) "Photograph Coating" means a coating designed and labeled exclusively to be applied to finished photographs to allow corrective retouching, protection of the image, changes in gloss level, or to cover fingerprints.
- (51) "Pleasure Craft" means privately owned boats used for noncommercial purposes.
- (52) "Pleasure Craft Finish Primer/Surfacer/Undercoat" means any coating designed and labeled exclusively to be applied before the application of a pleasure craft topcoat for the purpose of corrosion resistance and adhesion of a topcoat, and which promotes a uniform surface by filling in surface imperfections.

- (53) “Pleasure Craft Topcoat” means a coating designed and labeled exclusively to be applied to a pleasure craft as a final coat above the water line and above and below the water line when stored out of water. This category does not include clear coatings.
- (54) “Portland Air Quality Maintenance Area” or “Portland AQMA” is defined in OAR 340-204-0010. (The Portland AQMA includes portions of Clackamas, Multnomah and Washington Counties.)
- (55) “Primer” means a coating labeled as such, which is designed to be applied to a surface to promote a bond between that surface and subsequent coats.
- (56) “Propellant” means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from a container.
- (57) “Retailer” means any person who sells, supplies, or offers spray paint for sale directly to consumers or commercial applicators.
- (58) “Retail Outlet” means any establishment where spray paints are sold, supplied, or offered for sale directly to consumers or commercial applicators.
- (59) “Rust Converter” means a product which is designed and labeled exclusively to convert rust to an inert material, and which has a minimum acid content of 0.5 percent by weight, and which has a maximum coating solids content of 0.5 percent by weight.
- (60) “Shellac Sealer” means a clear or pigmented coating formulated solely with the resinous secretion of the lac beetle (*Laccifer lacca*), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.
- (61) “Slip-Resistant Coating” means a coating designed and labeled exclusively as such which is formulated with synthetic grit, and used as a safety coating.
- (62) “Spatter Coating/Multicolor Coating” means a coating labeled exclusively as such in which spots, globules, or spatters of contrasting colors appear on or within the surface of a contrasting or similar background.
- (63) “Spray Paint” means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic/marketing applications.
- (64) “Spray Paint Category” means the applicable category which best describes a spray paint listed in this rule.
- (65) “Stain” means a coating labeled as such which is designed and labeled to change the color of a surface without concealing the surface from view.
- (66) “Topcoat” means a coating applied over any coating, for the purpose of appearance, identification, or protection.
- (67) “Vinyl/Fabric/Polycarbonate Coating” means a coating designed and labeled exclusively to coat vinyl, fabric, or polycarbonate substrates.
- (68) “Volatile Organic Compound” or “VOC” means those compounds of carbon defined in division 200. For purposes of determining compliance with VOC content limits, VOC shall be measured by an applicable method identified in OAR 340-242-0750.
- (69) “VOC Content” means the ratio of the weight of VOC to the total weight of the product contents expressed as follows:

$$\text{VOC Content} = W_{\text{VOC}}/W_{\text{Total}} \times 100$$

Where:

$W_{\text{VOC}}$  = the weight of volatile organic compounds; and  
 $W_{\text{Total}}$  = the total weight of the product's contents.

- (70) "Webbing/Veiling Coating" means a spray product designed and labeled exclusively to produce a stranded or spider-webbed decorative effect.
- (71) "Weld-Through Primer" means a coating designed and labeled exclusively to provide a bridging or conducting effect to provide corrosion protection following welding.
- (72) "Wood Stain" means a coating which is formulated to change the color of a wood surface without concealing the surface from view.
- (73) "Wood Touch-Up/Repair/Restoration Coatings" mean coatings designed and labeled exclusively to provide an exact color or sheen match on finished wood products.

*State effective: 10/14/99; Effective: 3/24/2003:*

### **340-242-0720 SPRAY PAINT STANDARDS AND EXEMPTIONS**

- (1) Where required by OAR 340-242-0730, spray paint shall not exceed the VOC content limits in **Table F**, as modified by the special conditions and exemptions in sections (2) and (3) of this rule.

**Table F**

#### **SPRAY PAINT VOC CONTENT LIMITS**

##### **Spray Paint Category — VOC Content %-by-Weight**

###### **General Coatings:**

- Clear Coating — 67
- Flat Paint Products — 60
- Fluorescent Coatings — 75
- Lacquer Coating Products — 80
- Metallic Coating — 80
- Non-Flat Paint Products — 65
- Primer — 60

###### **Specialty Coatings:**

- Art Fixative or Sealant — 95
- Auto Body Primer — 80
- Automotive Bumper & Trim Products — 95
- Aviation or Marine Primer — 80
- Aviation Propeller Coating — 84
- Corrosion Resistant Brass, Bronze, or Copper Coatings — 92

###### **Exact Match Finish:**

- Engine Enamel — 80
- Automotive — 88
- Industrial — 88
- Floral Spray — 95
- Glass Coating — 95

Ground Traffic Marking Coating — 66  
High Temperature Coating — 80\*  
Hobby/Model/Craft Coating:  
    Enamel —80  
    Lacquer — 88  
    Clear or Metallic — 95  
Marine Spar Varnish — 85  
Photograph Coating — 95  
Pleasure Craft Finish Primer Surfacer or Undercoater — 75  
Pleasure Craft Topcoat —80  
Shellac Sealer:  
    Clear —88  
    Pigmented —75  
Slip-Resistant Coating — 80  
Spatter/Multicolor Coating — 80  
Vinyl/Fabric/Polycarbonate Coating — 95  
Webbing/Veil Coating — 90  
Weld-Through Primer — 75  
Wood Stains — 95  
Wood Touch-Up, Repair, or Restoration Coatings — 95

\*The VOC limit for High Temperature Coating shall be 88.0% until July 1, 1999, after which the 80.0% limit shall apply.

(2) Special Conditions. The following conditions shall apply to spray paint subject to VOC content limits under section (1) of this rule:

(a) The total weight of VOC contained in a multi-component kit shall not exceed the total weight of VOC that would be allowed in the multi-component kit had each component product met the applicable VOC standards.

(b)(A) Except as provided in paragraph (B) of this subsection, if anywhere on the principal display panel of any spray paint or in any promotion of the product, any representation is made that the product may be used as, or is suitable for use as a spray paint for which a lower VOC standard is specified in section (1) of this rule, then the lower VOC standard shall apply.

(B) If a spray paint is subject to both general coating limit and a specialty coating limit under section (1) of this rule, and the product meets all the criteria of the applicable specialty coating category as specified in OAR 340-242-0710, then the specialty coating limit shall apply instead of the general coating limit.

(3) Exemption. Section (1) of this rule shall not apply to aerosol lubricants, mold releases, automotive underbody coating, electrical coatings, cleaners, belt dressings, anti-static sprays, layout fluids and removers, adhesives, maskants, rust converters, dyes, inks, leather preservatives, or spray paint assembled by adding bulk paint to aerosol containers of propellant and solvent used for minor finish repairs during the original manufacture of products.

*State effective: 10/14/99; Effective: 3/24/2003:*

### **340-242-0730 REQUIREMENTS FOR MANUFACTURE, SALE AND USE OF SPRAY PAINT**

- (1) Manufacturers. Except as provided in section (6) of this rule, any person who manufactures spray paint after July 1, 1996 which is sold, offered for sale, supplied or distributed, directly or indirectly, to a retail outlet in the Portland AQMA shall:
  - (a) Manufacture complying spray paint for spray paint marketed in the Portland AQMA;
  - (b) Clearly display the following information on each product container such that it is readily observable upon hand-held inspection without removing or disassembling any portion of the product container or packaging:
    - (A) The maximum VOC content of the spray paint, expressed as a percentage by weight;
    - (B) The spray paint category as defined in OAR 340-242-0710, or an abbreviation of the spray paint category; and
    - (C) The date on which the product was manufactured, or a code indicating such date; and
  - (c) Notify direct purchasers of products manufactured for sale within the Portland AQMA upon determining that any noncomplying spray paint has been supplied in violation of this rule.
- (2) Distributors. Except as provided in section (6) of this rule, any distributor of spray paint manufactured after July 1, 1996 which is sold, offered for sale, supplied or distributed to a retail outlet within the Portland AQMA shall:
  - (a) Distribute to the Portland AQMA only spray paints that are labeled as required under subsection (1)(b) of this rule;
  - (b) Distribute to the Portland AQMA only spray paints labeled with VOC contents that meet the VOC limits specified in OAR 340-242-0720; and
  - (c) Notify direct purchasers of products distributed for sale within the Portland AQMA upon determining that any noncomplying spray paint has been supplied in violation of this rule.
- (3) Retailers.
  - (a) Except as provided in section (6) of this rule, no retailer shall knowingly sell within the Portland AQMA any noncomplying spray paint manufactured after July 1, 1996.
  - (b) Upon notification by the Department, a manufacturer, or a distributor that any noncomplying spray paint has been supplied, a retailer shall remove noncomplying spray paint from consumer-accessible areas of retail outlets within the Portland AQMA.
- (4) Commercial Applicators. Except as provided in section (6) of this rule, no commercial applicator shall, within the Portland AQMA, knowingly use or contract for the use of any noncomplying spray paint manufactured after July 1, 1996.
- (5) Label Alteration. No person shall remove, alter, conceal or deface the information required in subsection (1)(b) of this rule prior to final sale of the product.
- (6) Exception. For spray paint which has been granted a compliance extension under OAR 340-242-0770, this rule applies to spray paint manufactured after the date specified in the compliance extension.

*State effective: 10/14/99; Effective: 3/24/2003:*

### **340-242-0740 RECORDKEEPING AND REPORTING REQUIREMENTS**

- (1) Recordkeeping. Manufacturers subject to OAR 340-242-0730 shall maintain the

following records for at least 2 years after a product is sold, offered for sale, supplied or distributed by the manufacturer, directly or indirectly, to a retail outlet in the Portland AQMA.

- (a) VOC content records of spray paint based methods provided in OAR 340-242-0750;
  - (b) An explanation of any code indicating the date of manufacture of any spray paint; and
  - (c) Information used to substantiate an application for a compliance extension OAR 340-242-0770;
- (2) Reporting. Following request and within a reasonable period of time, records, specified in section (1) of this rule shall be made available to the Department.
- (3) Exemption from disclosure. If a person claims that any writing, as that term is defined in ORS 192.410(5), is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the procedures specified in OAR 340-242-0780.

*State effective: 10/14/99; Effective: 3/24/2003:*

### **340-242-0750 INSPECTION AND TESTING REQUIREMENTS**

- (1) The owner or operator of a facility subject to OAR 340-242-0700 through 340-242-0750 shall, at any reasonable time, make the facility available for inspection by the Department.
- (2) Upon request of the Department, any person subject to OAR 340-242-0700 through 340-242-0750 shall furnish samples of spray paint products selected by the Department from available stock for testing by the Department to determine compliance with OAR 340-242-0720.
- (3) Except as provided in Section (5) of this rule, testing to determine compliance with OAR 340-242-0720 shall be performed using:
- (a) VOC Content. The VOC content shall be determined by:
    - (A) The procedures set forth in **Bay Area Air Quality Management District Manual of Procedures, Volume III, Laboratory Procedures, Method 35, "Determination of Volatile Organic Compounds, (VOC) in Solvent Based Aerosol Paints," as amended January 19, 1994**, and, for water-containing spray paints, by **ASTM D 5325-92, "Standard Test Method for Determination of Weight Percent Volatile Content of Water-Borne Aerosol Paints", November 15, 1992**; or
    - (B) Calculation of VOC content from records amounts of constituents used to manufacture the product and the chemical compositions of the individual product constituents.
  - (b) Exempt Compounds. If a method specified in subsection (a) of this section to measure VOC also measures exempt compounds, the exempt compounds may be excluded from the VOC content if the amount of such compounds is accurately quantified. The Department may require a manufacturer to provide methods and results demonstrating, to the satisfaction of the Department, the amount of exempt compounds in the spray paint of the spray paint's emissions.
- (4) Except as provided in Section (5) of this rule, testing to establish the spray paint category as defined in ORA 340-242-0710 shall be performed using:
- (a) Metal Content. The metal content of metallic aerosol coating products shall be determined by South Coast Air Quality Management District Test Method 311 (**SCAQMD "Laboratory Methods of Analysis for Enforcement Samples"**)

**manual), June 1, 1991, after removal of the propellant following the procedure in ASTM Method 5325-92, “Standard Test Method for Determination of Weight Percent Volatile Content of Water-Borne Aerosol Paints”, November 15, 1992.**

(b) Specular Gloss. Specular gloss of flat and non-flat coatings shall be determined by **ASTM Method D 523-89, March 31, 1989.**

(c) Acid Content. The acid content of rust converters shall be determined by **ASTM Method D-1613-85, “Standard Test Method for Acidity in Volatile Solvents and Chemical Inter-mediate used in Paint, Varnish, Lacquer, and Related Products”, May 31, 1985,** after removal of the propellant following the procedure in **ASTM Method 5325-92, “Standard Test Method for Determination of Weight Percent Volatile Content of Water-Borne Aerosol Paints”, November 15, 1992.**

- (5) Alternative test methods which are shown to accurately determine the VOC content, exempt compounds, metal content, specular gloss, or acid content in a spray paint may also be used if approved in writing by EPA and the Department.

*State effective: 10/14/99; EPA Effective: 3/24/2003:*

## **AREA SOURCE COMMON PROVISIONS**

### **340-242-0760 APPLICABILITY**

OAR 340-242-0760 through 340-242-0790 apply to OAR 340-242-0600 through OAR 340-242-0750.

*State effective: 10/14/99; EPA Effective: 3/24/2003:*

### **340-242-0770 COMPLIANCE EXTENSIONS**

Any manufacturer, as defined in OAR 340-242-0710, who cannot comply with the requirements specified in OAR 340-242-0700 to 340-242-0750 by the applicable compliance date because of conditions specified in section (4) of this rule may apply in writing to the Department for a compliance extension of up to 3 years in renewable 1 year increments.

- (1) A manufacturer shall apply in writing to the Department for any compliance extension under this section. Information claimed by the applicant as confidential or otherwise exempt from disclosure shall be submitted in accordance with OAR 340-242-0780. The application shall include;
- (a) An explanation of the specific grounds addressing each subsection under section (4) of this rule on which the compliance extension is sought;
  - (b) The requested terms and conditions;
  - (c) The specific method(s) by which compliance with the requested terms and conditions will be achieved;
  - (d) Any interim measures which may be taken during the period of the compliance extension to limit the amount of emissions in excess of the rule limits; and
  - (e) If applicable, any compliance extension, alternate control requirement or variance order granted by another local, state or federal air pollution control agency.

- (2) Within 30 days of receipt of the compliance extension application, the Department shall determine whether an application is complete.
- (3) Within 90 days after an application has been deemed complete, the Department shall determine whether, under what conditions, and to what extent, a compliance extension shall be approved. The applicant and the Department may mutually agree to extend the period for making a determination, and additional supporting documentation may be submitted by the applicant before the determination is reached.
- (4) In considering whether to approve a compliance extension, the Department shall consider the following:
  - (a) Conditions beyond the control of the applicant;
  - (b) Special circumstances which render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause;
  - (c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or
  - (d) No other alternative facility or method of handling is yet available.
- (5) Any compliance extension order shall specify terms and conditions, including a date by which final compliance shall be achieved. The final compliance date shall not exceed 3 years after the applicable compliance date. A compliance extension shall be granted in 1 year increments which may be renewed until the final compliance date upon a showing by the manufacturer that any increments of progress and other terms and conditions in the order have been met.
- (6) The Department shall notify the applicant in writing of the determination under section (3) of this rule and the terms and conditions established under section (5) of this rule.
- (7) Notwithstanding Section (4) of this rule, if, prior to the applicable compliance date, a manufacturer, as defined in OAR 340-242-0710, submits to the Department a variance order granted by the California Air Resources Board (CARB) which is valid as of February 20, 1995, the manufacturer shall be granted a 1 year extension from the applicable compliance date. Such compliance extensions may be revoked by the Department if the Department believes that the manufacturer is not in compliance with the terms and conditions of the CARB variance order.
- (8) For any product for which a compliance extension has been approved pursuant to this rule, the manufacturer shall notify the Department in writing within 30 days if the manufacturer learns that information submitted to the Department under this rule has changed in a manner which could modify the basis of the Department's approval.
- (9) If the Department believe that a product for which a compliance extension has been granted no longer meets the criteria for a compliance extension specified in this rule, the Department may modify or revoke the extension as necessary to ensure that the product will meet these criteria. The Department shall notify the applicant in writing if a compliance extension is modified or revoked under this section.

*State effective: 10/14/99; EPA Effective: 3/24/2003:*

### **340-242-0780 EXEMPTION FROM DISCLOSURE TO THE PUBLIC**

- (1) If a person claims that any writing, as that term is defined in ORS 192.410(5), is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the following procedures:

- (a) The writing shall be clearly marked with a request for exemption from disclosure. For a multi-page writing, each page shall be so marked.
  - (b) The person shall state the specific statutory provision under which it claims exemption from disclosure and explain why the writing meets the requirements of that provision.
  - (c) For writings that contain both exempt and non-exempt material, the proposed exempt material shall be clearly distinguishable from the non-exempt material. If possible, the exempt material shall be arranged so that it is placed on separate pages from the non-exempt material.
- (2) For a writing to be considered exempt from disclosure as a “trade secret,” it shall meet all of the following criteria:
- (a) The information shall not be patented;
  - (b) It shall be known only to a limited number of individuals within a commercial concern who have made efforts to maintain the secrecy of the information;
  - (c) It shall be information which derives actual or potential economic value from not being disclosed to other persons; and
  - (d) It shall give its users the chance to obtain a business advantage over competitors not having the information.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-242-0790 FUTURE REVIEW**

Within a reasonable period of time following adoption by the United States Environmental Protection Agency of regulations to reduce VOC emissions from one or more products subject to OAR 340-242-0700 through OAR 340-242-0750, the Department shall provide the following information to the Environmental Quality Commission:

- (1) A comparison of the federal regulation with OAR 340-242-0700 through 340-242-0750;
- (2) An estimate of the change in emissions which would occur from repeal of provisions in OAR 340-242-0700 through 340-242-0750 applicable to such product or products;
- (3) An assessment of the effect of eliminating or modifying the provisions of OAR 340-242-0700 through OAR 340-242-0750 on the State Implementation Plan adopted under OAR 340-200-0040, including any need for substitute measures; and
- (4) A recommendation regarding amendment to eliminate such provisions and, if applicable, a schedule for amendment.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **DIVISION 250**

#### **GENERAL CONFORMITY**

##### **340-250-0010 PURPOSE**

- (1) The purpose of these rules is to implement Section 176(c) of the Clean Air Act (Act), (Public Law 88-206 as last amended by Public Law 101-549) and regulations under **40 CFR Part 51 subpart W (July 1, 1994)**, with respect to the conformity of general

federal actions to the applicable implementation plan. Under those authorities no department, agency or instrumentality of the federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan. These rules set forth policy, criteria, and procedures for demonstrating and assuring conformity of such actions to the applicable implementation plan.

- (2) Under Section 176(c) of the Act and **40 CFR Part 51 subpart W (July 1, 1994)**, a federal agency must make a determination that a federal action conforms to the applicable SIP in accordance with this division before the action is taken.
- (3) Section (2) of this rule does not include federal actions where either:
  - (a) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or
  - (b) the following has been completed:
    - (A) Prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis;
    - (B) Sufficient environmental analysis is completed by March 15, 1994 so that the federal agency may determine that the federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under Section 176(c) of the Act; and
    - (C) A written determination of conformity under Section 176(c) of the Act has been made by the federal agency responsible for the federal action by March 15, 1994.
- (4) Notwithstanding any provision of this division, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the NEPA, or the Act.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-250-0020 APPLICABILITY**

- (1) Conformity determinations for federal actions in a nonattainment area or maintenance area related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53 ) must meet the procedures and criteria for transportation conformity as set forth in OAR 340 division 252, in lieu of the procedures set forth in this division.
- (2) For federal actions in a nonattainment area or maintenance area not covered by section (1) of this rule, a conformity determination is required for each pollutant where the total of direct and indirect emissions caused by a federal action would equal or exceed any of the rates in sections (3)(a) and (b) of this rule.
- (3) The following emission rates apply to federal actions pursuant to section (2) of this rule:
  - (a) For nonattainment areas: **Pollutant -- Tons per year:**
    - (A) Ozone (VOCs or NO<sub>x</sub>):
      - (i) Serious NAAs -- 50;
      - (ii) Severe NAAs -- 25;

- (iii) Extreme NAAs -- 10;
  - (iv) Other ozone NAAs (Outside an ozone transport region) -- 100;
  - (v) Marginal & moderate NAAs (Inside an ozone transport region):
    - (I) VOC -- 50;
    - (II) NO<sub>x</sub> -- 100.
  - (B) Carbon Monoxide: All NAAs -- 100;
  - (C) SO<sub>2</sub> or NO<sub>2</sub>: All NAAs -- 100;
  - (D) PM<sub>10</sub>:
    - (i) Moderate NAAs -- 100;
    - (ii) Serious NAAs -- 70;
    - (iii) Pb: All NAAs -- 25.
- (b) For maintenance areas: **Pollutant -- Tons per Year:**
  - (A) Ozone (NO<sub>x</sub>), SO<sub>2</sub> or NO<sub>2</sub>: All maintenance areas -- 100;
  - (B) Ozone (VOCs): Maintenance areas:
    - (i) Inside ozone transport region -- 50;
    - (ii) Outside ozone transport region -- 100.
  - (C) Carbon Monoxide: All maintenance areas -- 100;
  - (D) PM<sub>10</sub>: All maintenance areas -- 100;
  - (E) Pb: All maintenance areas -- 25.
- (4) The requirements of this division shall not apply to:
  - (a) Actions where the total of direct and indirect emissions are below the emissions levels specified in subsection (b) of this section.
  - (b) The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:
    - (A) Judicial and legislative proceedings.
    - (B) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.
    - (C) Rulemaking and policy development and issuance.
    - (D) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.
    - (E) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training or law enforcement personnel.
    - (F) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.
    - (G) The routine, recurring transportation of material and personnel.
    - (H) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups or for repair or overhaul.
    - (I) Maintenance dredging and debris disposal where no new depths are required, applicable permits are required, and disposal will be at an approved site.
    - (J) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures,

properties, facilities, and lands; for example, relocation of personnel, disposition of federally owned existing structures, properties, facilities and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership and conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

- (K) The granting of leases, licenses such as for exports and trade, permits and easements where activities conducted will be similar in scope and operation to activities currently being conducted.
  - (L) Planning, studies, and provision of technical assistance.
  - (M) Routine operation of facilities, mobile assets and equipment.
  - (N) Transfer of ownership, interests, and titles in land, facilities and real and personal properties, regardless of the form or method of the transfer.
  - (O) The designation of empowerment zones, enterprise communities, or viticultural areas.
  - (P) Actions by any of the federal banking agencies of the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.
  - (Q) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy.
  - (R) Actions that implement a foreign affairs function of the United States.
  - (S) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.
  - (T) Transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity for subsequent deeding to eligible applicants.
  - (U) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.
- (c) The following actions where the emissions are not reasonably foreseeable:
- (A) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.
  - (B) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.
- (d) Actions in nonattainment areas or maintenance areas which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan.
- (5) Notwithstanding the other requirements of this division, a conformity determination is not required for the following federal actions (or portion thereof):

- (a) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (Section 173 of the Act) or the prevention of significant deterioration (PSD) program (Title I, part C of the Act).
  - (b) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of section (6) of this rule.
  - (c) Research, investigations, studies, demonstrations, or training, other than those exempted under section (4)(b) of this rule, where no environmental detriment is incurred or the particular action furthers air quality research, as determined by the state agency primarily responsible for the applicable SIP.
  - (d) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g. hush houses for aircraft engines and scrubbers for air emissions).
  - (e) Direct emissions from remedial and removal actions carried out under the CERCLA and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.
- (6) Federal actions which are part of a continuing response to an emergency or disaster under section (5)(b) of this rule and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under section (5)(b) of this rule are exempt from the requirements of this division only if:
- (a) The federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or
  - (b) For actions which are to be taken after those actions covered by subsection (a) of this section, the federal agency makes a new determination as provided in subsection (a) of this section.
- (7) Notwithstanding other requirements of this division, actions specified by individual federal agencies that have met the criteria set forth in section (8) of this rule and the procedures set forth in section (9) of this rule are presumed to conform, except as provided in section (11) of this rule.
- (8) The federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either subsection (a) or (b) of this section:
- (a) The federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:
    - (A) Cause or contribute to any new violation of any standard in any area;
    - (B) Interfere with provisions in the applicable SIP for maintenance of any standard;
    - (C) Increase the frequency or severity of any existing violation of any standard in any area;
    - (D) Delay timely attainment of any standard or any required interim emission

reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

- (i) A demonstration of reasonable further progress;
  - (ii) A demonstration of attainment; or
  - (iii) A maintenance plan; or
- (b) The federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emissions rates for a conformity determination that are established in section (3) of this rule, based, for example, on similar actions taken over recent years.
- (9) In addition to meeting the criteria for establishing exemptions set forth in section (8) of this rule, the following procedures must also be complied with to presume that activities will conform:
- (a) The federal agency must identify through publication in the Federal Register its list of proposed activities that are presumed to conform and the basis for the presumptions;
  - (b) The federal agency must notify the appropriate EPA Regional Office(s), state and local air quality agencies and, where applicable, the agency designated under section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;
  - (c) The federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and
  - (d) The federal agency must publish the final list of such activities in the Federal Register.
- (10) Notwithstanding the other requirements of this division, when the total of direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in section (3) of this rule, but represents 10 percent or more of a non-attainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of 340-250-0010, and OAR 340-250-0050 through 340-250-0100 shall apply for the federal action.
- (11) Where an action otherwise presumed to conform under section (7) of this rule is a regionally significant action or does not in fact meet one of the criteria in section (8) (a) of this rule, that action shall not be presumed to conform and the requirements of OAR 340-250-0020 and 340-250-0050 through 340-250-0100 shall apply for the federal action.
- (12) The provisions of this division shall apply in all non-attainment/maintenance areas.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-250-0030 DEFINITIONS**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

- (1) "Affected federal land manager" means the federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the Act that is located within 100 km of the proposed federal action.
- (2) "Applicable implementation plan" or "applicable SIP" means the portion (or portions) of the applicable SIP or most recent revision thereof, which has been approved under

Section 110 of the Act, or promulgated under Section 110(c) of the Act (Federal implementation plan), or promulgated under Section 301(d) of the Act which implements the relevant requirements of the Act.

- (3) "Areawide air quality modeling analysis" means an assessment on a scale that includes the entire nonattainment area or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.
- (4) "Cause or contribute to any new violation of any standard in any area" means a federal action that:
  - (a) Causes a new violation of a NAAQS at a location in a nonattainment area or maintenance area which would otherwise not be in violation of the standard during the future period in question if the federal action were not taken; or
  - (b) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment area or maintenance area in a manner that would increase the frequency or severity of the new violation.
- (5) "Caused by", as used in the terms "direct emissions" and "indirect emissions," means emissions that would not otherwise occur in the absence of the federal action.
- (6) "Criteria pollutant" means any pollutant for which there is established a NAAQS at **40 CFR part 50 (July 1, 1994)**.
- (7) "Direct emissions" means those emissions of a criteria pollutant or precursors of a criteria pollutant that are caused or initiated by the federal action and occur at the same time and place as the action.
- (8) "Emergency" means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such federal activities makes it impractical to meet the requirements of this division, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.
- (9) "Emissions budgets" means those portions of the applicable SIP's projected emissions inventories that describe levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, or maintenance for any criteria pollutant or precursors of a criteria pollutant.
- (10) "Emissions offsets", for purposes of OAR 340-250-0080, means emissions reductions which are quantifiable, consistent with OAR 340 division 268 and OAR 340-224-0090, and the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other SIP provisions, enforceable at both the state and federal levels, and permanent within the timeframe specified by the program.
- (11) "Emissions that a federal agency has a continuing program responsibility for" means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.
- (12) "EPA" means the United States Environmental Protection Agency.
- (13) "Federal action" means any activity engaged in by a department, agency, or instrumentality of the federal government, or any activity that a department, agency or instrumentality of the federal government supports in any way, provides financial

assistance for licenses, permits, or approves under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant activity is the part, portion, or phase of the nonfederal undertaking that requires the federal permit, license, or approval.

- (14) "Federal agency" means a federal department, agency, or instrumentality of the federal government.
- (15) "Increase the frequency or severity of any existing violation of any standard in any area" means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.
- (16) "Indirect emissions" means those emissions of a criteria pollutant or precursors of a criteria pollutant that:
  - (a) Are caused by the federal action, but may occur later in time or may be farther removed in distance from the action itself but are still reasonably foreseeable; and
  - (b) The federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency.
- (17) "Local air quality modeling analysis" means an assessment of localized impacts on a scale smaller than the entire nonattainment area or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.
- (18) "Maintenance area" means an area with a maintenance plan approved under Section 175A of the Act.
- (19) "Maintenance plan" means a revision to the applicable SIP, meeting the requirements of Section 175A of the Act.
- (20) "Metropolitan Planning Organization" or "MPO" means that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.
- (21) "Milestone" has the meaning given in Sections 182(g)(1) and 189(c)(1) of the Act.
- (22) "National ambient air quality standards" or "NAAQS" means those standards established pursuant to Section 109 of the Act and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone, particulate matter (PM<sub>10</sub>), and sulfur dioxide (SO<sub>2</sub>).
- (23) "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).
- (24) "Nonattainment area" means an area designated as nonattainment under Section 107 of the Act and described in **40 CFR part 81 (July 1, 1994)**.
- (25) "Precursors of a criteria pollutant" means:
  - (a) For ozone, nitrogen oxides (NO<sub>x</sub>), unless an area is exempted from NO<sub>x</sub> requirements under Section 182(f) of the Act, and volatile organic compounds (VOC); and
  - (b) For PM<sub>10</sub>, those pollutants described in the PM<sub>10</sub> nonattainment area applicable SIP as significant contributors to the PM<sub>10</sub> levels.
- (26) "Reasonably foreseeable emissions" means projected future indirect emissions that

are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.

- (27) "Regional water or wastewater projects" include construction, operation, and maintenance of water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment area or maintenance area.
- (28) "Regionally significant action" means a federal action for which the direct emissions and indirect emissions of any pollutant represent 10 percent or more of a nonattainment area's or maintenance area's emissions inventory for that pollutant.
- (29) "Total of direct and indirect emissions" means the sum of direct emissions and indirect emissions increases and decreases caused by the federal action; i.e., the "net" emissions considering all direct emissions and indirect emissions. The portion of emissions which are exempt or presumed to conform under OAR 340-250-0020(4), (5), (6) or (7) are not included in the "total of direct and indirect emissions."

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-250-0040 CONFORMITY ANALYSIS**

Any federal department, agency, or instrumentality of the federal government taking an action subject to OAR 340-250-0020(3) must make its own conformity determination consistent with the requirements of this division. In making its conformity determination, a federal agency must consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency or develop its own analysis in order to make its conformity determination.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-250-0050 REPORTING REQUIREMENTS**

- (1) A federal agency making a conformity determination under OAR 340-250-0080 must provide to the appropriate EPA Regional Office(s), state and local air quality agencies and, where applicable, affected federal land managers, the agency designated under Section 174 of the Act and the MPO a 30 day notice which describes the proposed action and the federal agency's draft conformity determination on the action.
- (2) A federal agency must notify the appropriate EPA Regional Office(s), state and local air quality agencies and, where applicable, affected land managers, the agency designated under Section 174 of the Clean Air Act and the MPO within 30 days after making a final conformity determination under OAR 340-250-0080.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-250-0060 PUBLIC PARTICIPATION**

- (1) Upon request by any person regarding a specific federal action, a federal agency must make available for review its draft conformity determination under OAR 340-250-0080 with supporting material which describe the analytical methods, assumptions and conclusions relied upon in making the applicability analysis and draft conformity

determination.

- (2) A federal agency must make public its draft conformity determination under 340-250-0080 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.
- (3) A federal agency must document its response to all the comments received on its draft conformity determination under OAR 340-250-0080 and make the comments and responses available, upon request by any person regarding a specific federal action, within 30 days of the final conformity determination.
- (4) A federal agency must make public its final conformity determination under 340-250-0080 for a federal action by placing notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-250-0070 FREQUENCY OF CONFORMITY DETERMINATIONS**

- (1) The conformity status of a federal action automatically lapses 5 years from the date a final conformity determination is reported under OAR 340-250-0050, unless the federal action has been completed or a continuous program has been commenced to implement that federal action within a reasonable time.
- (2) Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as the emissions associated with such activities are within the scope of the final conformity determination reported under OAR 340-250-0050.
- (3) If, after the conformity determination is made, the federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in OAR 340-250-0020(4), a new conformity determination is required.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-250-0080 CRITERIA FOR DETERMINING CONFORMITY OF GENERAL FEDERAL ACTIONS**

- (1) An action required under OAR 340-250-0020 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in OAR 340-250-0020(3), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of section (3) of this rule, and meets any of the following requirements:
  - (a) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;
  - (b) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment area or maintenance area through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that

- pollutant;
- (c) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:
    - (A) Specified in section (2) of this rule, based on areawide air quality modeling analysis and local air quality modeling analysis; or
    - (B) Meet the requirements of subsection (e) of this section and, for local air quality modeling analysis, the requirements of section (2) of this rule.
  - (d) For CO or PM<sub>10</sub>:
    - (A) Where the Department or local air quality agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in section (2) of this rule, based on local air quality modeling analysis; or
    - (B) Where the Department or local air quality agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in section (2) of this rule, based on areawide modeling, or meet the requirements of subsection (e) of this section.
  - (e) For ozone or nitrogen dioxide, and for purposes of subsections (c)(B) and (d)(B) of this section, each portion of the action or the action as a whole meets any of the following requirements:
    - (A) Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the state makes a determination as provided in subparagraph (i) of this paragraph or where the state makes a commitment as provided in subparagraph (ii) of this paragraph:
      - (i) The total of direct and indirect emissions from the action, or portion thereof, is determined and documented by the state agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area or maintenance area, would not exceed the emissions budgets specified in the applicable SIP;
      - (ii) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the state agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area or maintenance area, would not exceed the emissions budget specified in the applicable SIP and the State Governor or the Governor's designee for SIP actions makes a written commitment to EPA which includes the following:
        - (I) A specific schedule for adoption and submittal of a revision to the applicable SIP which would achieve the needed emission reductions prior to the time emissions from the federal action would occur;
        - (II) Identification of specific measures for incorporation into the applicable SIP which would result in a level of emissions which, together with all other emissions in the nonattainment area or maintenance area, would not exceed any emissions budget specified in the applicable SIP;
        - (III) A demonstration that all existing applicable SIP requirements are

being implemented in the area for the pollutants affected by the federal action, and that local authority to implement additional requirements has been fully pursued;

(IV) A determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action; and

(V) Written documentation including all air quality analyses supporting the conformity determination.

(iii) Where a federal agency made a conformity determination based on a state commitment under subparagraph (ii) of this paragraph such a state commitment is automatically deemed a call for a SIP revision by EPA under Section 110(k)(5) of the Act, effective on the date of the federal conformity determination and requiring response within 18 months or any shorter time within which the state commits to revise the applicable SIP.

(B) The action, or portion thereof, as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under **40 CFR part 51, subpart T (July 1,1994)** or **40 CFR part 93, subpart A (July 1, 1994)**, and OAR 340 division 252.

(C) The action, or portion thereof, fully offsets its emissions within the same nonattainment area or maintenance area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(D) Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, the total direct and indirect emissions from the action for the future years (described in OAR 340-250-0090(4)) do not increase emissions with respect to the baseline emissions:

(i) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during:

(I) Calendar year 1990;

(II) The calendar year that is the basis for the classification, or, where the classification is based on multiple years, the most representative year, if a classification is promulgated in **40 CFR part 81 (July 1, 1994)**; or

(III) The year of the baseline inventory in the PM<sub>10</sub> applicable SIP.

(ii) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in OAR 340-250-0090(4)) using the historic activity levels (described in subparagraph (i) of this paragraph) and appropriate emission factors for the future years; or

(E) Where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.

(2) The areawide air quality modeling analysis or local air quality modeling analysis must:

(a) Meet the requirements in OAR 340-250-0090; and

(b) Show that the action does not:

(A) Cause or contribute to any new violation of any standard in any area;

(B) Increase the frequency or severity of any existing violation of any standard in

any area.

- (3) Notwithstanding any other requirements of this rule, an action subject to this division may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements, and such action is otherwise in compliance with all relevant requirements of the applicable SIP.
- (4) Any analyses required under this rule must be completed, and any mitigation requirements necessary for a finding of conformity must be identified in compliance with OAR 340-250-0100, before the determination of conformity is made.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-250-0090 PROCEDURES FOR CONFORMITY DETERMINATIONS OF GENERAL FEDERAL ACTIONS**

- (1) The analyses required under OAR 340-250-0080 and 340-250-0090 must be based on the latest planning assumptions.
  - (a) All planning assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently approved by the MPO, or other agency authorized to make such estimates, where available.
  - (b) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.
- (2) The analyses required under OAR 340-250-0080 and 340-250-0090 must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.
  - (a) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIPs in that state must be used for the conformity analysis as specified in subsections (A) and (B) of this section:
    - (A) The EPA must publish in the Federal Register a notice of availability of any new motor vehicle emissions model; and
    - (B) A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.
  - (b) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "**Compilation of Air Pollutant Emission Factors (AP-42)**" must be used for conformity analysis

- unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.
- (3) The air quality modeling analyses required under OAR 340-250-0080 and 340-250-0090 must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "**Guideline on Air Quality Models (Revised)**"(1986), including supplements (EPA publication no. 450/2-78-027R), unless:
    - (a) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program; and
    - (b) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.
  - (4) The analyses required under OAR 340-250-0080 and 340-250-0090 must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:
    - (a) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;
    - (b) The year during which the total of direct and indirect emissions from the action for each pollutant is expected to be the greatest on an annual basis; and
    - (c) Any year for which the applicable SIP specifies an emissions budget.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

#### **340-250-0100 MITIGATION OF AIR QUALITY IMPACTS**

- (1) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.
- (2) Prior to determining that a federal action is in conformity, the federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. Such written comments shall describe the mitigation measures and the nature of the commitments in a manner consistent with section (1) of this rule.
- (3) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.
- (4) In instances where the federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination, as provided in section (1) of this rule.
- (5) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of OAR 340-250-0050 and the public participation requirements of OAR 340-250-0060.
- (6) Written commitments to mitigation measures must be obtained prior to a positive conformity determination and all such commitments must be fulfilled.

- (7) After the Department revises its SIP to adopt its general conformity rules and EPA approves that SIP revision, any agreements, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct emissions and indirect emissions associated with a federal action for a conformity determination.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

## **DIVISION 252**

### **TRANSPORTATION CONFORMITY**

#### **340-252-0010 PURPOSE**

The purpose of this division is to implement section 176(c) of the Clean Air Act, as amended [42 U.S.C. 7401 et seq.], and the related requirements of **23 U.S.C. 109(j)**, with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This division sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to section 110 and Part D of the CAA.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

#### **340-252-0020 APPLICABILITY**

- (1) Action applicability. Except as provided for in section (3) of this rule or OAR 340-252-0270, conformity determinations are required for:
- (a) The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to **23 CFR Part 450** or **49 CFR Part 613** by an MPO or a DOT;
  - (b) The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to **23 CFR Part 450** or **49 CFR Part 613** by an MPO or DOT; and
  - (c) The approval, funding, or implementation of FHWA/FTA transportation projects or regionally significant projects by a recipient of funds under title 23 U.S.C.
- (2) Geographic Applicability.
- (a) The provisions of this division shall apply in all nonattainment and maintenance areas for transportation related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.
  - (b) The provisions of this rule apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>).
  - (c) The provisions of this rule apply with respect to emissions of the following precursor pollutants:
    - (A) Volatile organic compounds and nitrogen oxides in ozone areas;

- (B) Nitrogen oxides in nitrogen dioxide areas; and
- (C) Volatile organic compounds, nitrogen oxides, and PM<sub>10</sub> in PM<sub>10</sub> areas if:
  - (i) The EPA Regional Administrator or the director of the Department of Environmental Quality, or the director of any other regional air authority has made a finding, including a finding in an applicable implementation plan or a submitted implementation plan revision that transportation related precursor emissions within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT; or

- (ii) The applicable implementation plan, or implementation plan submission, establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

- (d) The provisions of this division apply to maintenance areas for 20 years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this division shall apply for more than 20 years.

(3) Limitations.

- (a) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three years have elapsed since the most recent major step (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

- (b) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three years have elapsed since the most recent major step to advance the project occurred.

*State effective: 10/14/99; EPA effective: 3/24/2003.*

### **340-252-0030 DEFINITIONS**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division. Terms used but not defined in this rule shall have the meaning given them by the CAA, **Titles 23 and 49 U.S.C.**, other Environmental Protection Agency regulations, or other DOT regulations, in that order of priority.

(1) "Applicable implementation plan" is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

(2) "CAA" means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

(3) "Cause or contribute to a new violation" for a project means:

- (a) To cause or contribute to a new violation of a standard in the area substantially

affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

(b) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

- (4) "Clean data" means air quality monitoring data determined by EPA to meet the requirements of **40 CFR part 58** that indicate attainment of the national ambient air quality standard.
- (5) "Consult" or "consultation" means that the party or parties responsible for consultation as established in OAR 340-252-0060 shall provide all appropriate information necessary to making a conformity determination and, prior to making a conformity determination, except with respect to a transportation plan or TIP revision which merely adds or deletes exempt projects listed in OAR 340-252-0270, consider the views of such parties and provide a timely, written response to those views. Such views and written responses shall be included in the record of decision or action.
- (6) "Control strategy implementation plan" or "control strategy implementation plan revision" is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide).
- (7) "DEQ" means the Department of Environmental Quality.
- (8) "Design concept" means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.
- (9) "Design scope" means the design aspects of a facility which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.
- (10) "DOT" means the United States Department of Transportation.
- (11) "EPA" means the Environmental Protection Agency.
- (12) "FHWA" means the Federal Highway Administration of DOT.
- (13) "FHWA/FTA project" for the purpose of this division, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.
- (14) "FTA" means the Federal Transit Administration of DOT.
- (15) "Forecast period" with respect to a transportation plan is the period covered by the transportation plan pursuant to **23 CFR Part 450**.
- (16) "Highway project" is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:
  - (a) Connect logical termini and be of sufficient length to address environmental

matters on a broad scope;

(b) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(c) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

- (17) "Horizon year" is a year for which the transportation plan describes the envisioned transportation system in accordance with OAR 340-252-0070.
- (18) "Hot-spot analysis" is an estimation of likely future localized CO and PM<sub>10</sub> pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-Spot Analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.
- (19) "Increase the frequency or severity" means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.
- (20) "Lapse" means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.
- (21) "Lead Planning Agency" means an agency designated pursuant to section 174 of the Clean Air Act as responsible for developing an applicable implementation plan.
- (22) "Maintenance area" means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under § 175A of the CAA, as amended.
- (23) "Maintenance plan" means an implementation plan adopted by the Environmental Quality Commission, endorsed by the Governor and submitted to EPA under section 175(a) of the CAA, as amended.
- (24) "Maximum priority" means that all possible actions must be taken to shorten the time periods necessary to complete essential steps in TCM implementation - for example, by increasing the funding rate - even though timing of other projects may be affected. It is not permissible to have prospective discrepancies with the SIP's TCM implementation schedule due to lack of funding in the TIP, lack of commitment to the project by the sponsoring agency, unreasonably long periods to complete future work due to lack of staff or other agency resources, lack of approval or consent by local governmental bodies, or failure to have applied for a permit where necessary work preliminary to such application has been completed. However, where statewide and metropolitan funding resources and planning and management capabilities are fully consumed, within the flexibilities of the Intermodal Surface Transportation Efficiency Act (ISTEA), with responding to damage from natural disasters, civil unrest, or terrorist acts, TCM implementation can be determined to be timely without regard to the above, provided reasonable efforts are being made.
- (25) "Metropolitan area" means any area where a metropolitan planning organization has been designated.
- (26) "Metropolitan planning organization" or "MPO" is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is

the forum for cooperative transportation decision-making.

- (27) "Milestone" has the meaning given in § 182(g)(1) and § 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.
- (28) "Motor vehicle emissions budget" is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.
- (29) "National ambient air quality standards" or "NAAQS" are those standards established pursuant to § 109 of the CAA.
- (30) "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).
- (31) "NEPA process completion" with respect to FHWA or FTA, means the point at which there is a specific action to make a final determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.
- (32) "Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under § 107 of the CAA for any pollutant for which a national ambient air quality standard exists.
- (33) "ODOT" means the Oregon Department of Transportation.
- (34) "Policy level official" means elected officials, and management and senior staff level employees.
- (35) "Project" means a highway project or transit project.
- (36) "Protective finding" means a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.
- (37) "Recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws" means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.
- (38) "Regional air authority" means a regional air authority established pursuant to ORS 468A.105.
- (39) "Regionally significant project" means a transportation project, other than an exempt project, that is on a facility which serves regional transportation needs, such as access to and from the area outside the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves, and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum:
  - (a) All principal arterial highways;

(b) All fixed guideway transit facilities that offer an alternative to regional highway travel; and

(c) Any other facilities determined to be regionally significant through interagency consultation pursuant to OAR 340-252-0060.

[NOTE: A project that is included in the modeling of an area's transportation network may not, subject to interagency consultation, be considered regionally significant because it is not on a facility which serves regional transportation needs.]

(40) "Safety margin" means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance.

(41) "Scope" means "design scope" as defined in section (9) of this rule when the term follows "design concept and...".

(42) "Standard" means a national ambient air quality standard.

(43) "Transit" is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

(44) "Transit project" is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(a) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(b) Have independent utility or independent significance; i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(c) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(45) "Transportation control measure" or "TCM" is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.

Notwithstanding the first sentence of this definition, vehicle technology based, fuel based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this division.

(46) "Transportation improvement program" or "TIP" means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to **23 CFR Part 450**.

(47) "Transportation plan" means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to **23 CFR Part 450**.

(48) "Transportation project" means a roadway project or a transit project.

(49) "VMT" means vehicle miles traveled.

(50) "Written commitment" for the purposes of this division means a written commitment that includes a description of the action to be taken; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0040 PRIORITY**

When assisting or approving any action with air quality related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0050 FREQUENCY OF CONFORMITY DETERMINATIONS**

- (1) Conformity determinations and conformity redeterminations for transportation plans, TIPs, FHWA/FTA projects, and regionally significant projects approved or adopted by a recipient of funds under title 23 U.S.C. must be made according to the requirements of this rule and the applicable implementation plan.
- (2) Frequency of conformity determinations for transportation plans.
  - (a) Each new transportation plan must be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT. Each new transportation plan must be demonstrated to conform in accordance with the consultation requirements in OAR 340-252-0060.
  - (b) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by an MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in OAR 340-252-0270. The conformity determination must be based on the transportation plan and the revision taken as a whole, and must be made in accordance with the consultation provisions of OAR 340-252-0060.
  - (c) The MPO and DOT must determine the conformity of the transportation plan no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, the existing conformity determination will lapse.
- (3) Frequency of conformity determinations for transportation improvement programs.
  - (a) A new TIP must be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT. The new TIP must be demonstrated to conform in accordance with the consultation requirements in OAR 340-252-0060.
  - (b) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in OAR 340-252-0270 or 340-252-0280. The TIP amendment must be demonstrated to conform in accordance with the consultation requirements in OAR 340-252-0060.
  - (c) The MPO and DOT must determine the conformity of the TIP no less

frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, the existing conformity determination will lapse.

(d) After an MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six months from the date of DOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in OAR 340-252-0270 or 340-252-0280. Otherwise, the existing conformity determination for the TIP will lapse.

- (4) Projects. FHWA/FTA transportation projects must be found to conform before they are adopted, accepted, approved, or funded. In the case of recipients of funds under title 23 U.S.C. or the Federal Transit Laws, all regionally significant projects must be demonstrated to conform before they are approved or adopted. Conformity must be redetermined for any FHWA/FTA project or any regionally significant project adopted or approved by a recipient of funds under **Title 23 U.S.C.** if three years have elapsed since the most recent major step to advance the project (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred.
- (5) Triggers for transportation plan and TIP conformity determinations. Conformity of existing transportation plans and TIPS must be redetermined within 18 months of the following, or the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT:
- (a) November 24, 1993;
  - (b) The date of the State's initial submission to EPA of each control strategy implementation plan or maintenance plan establishing a motor vehicle emissions budget;
  - (c) EPA approval of a control strategy implementation plan revision or maintenance plan establishing a motor vehicle emissions budget;
  - (d) EPA approval of an implementation plan revision that adds, deletes, or changes TCMs; and
  - (e) EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget or adds, deletes, or changes TCMs.
- (6) Additional triggers for transportation plan and TIP conformity determinations. Conformity of existing transportation plans and TIPS must be redetermined within 24 months after the EQC adopts a SIP revision which adds TCMs or the next transportation plan approval (whichever comes first) or the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0060 CONSULTATION**

(1) General:

(a) This section provides procedures for interagency consultation (Federal, State, and local) and resolution of conflicts. Consultation shall be undertaken by MPOs, the Oregon Department of Transportation, affected local jurisdictions, and USDOT before making conformity determinations and in developing regional

transportation plans and transportation improvement programs. Consultation shall be undertaken by a lead planning agency, the Department of Environmental Quality, the Lane Regional Air Pollution Authority (for actions in Lane County which are subject to this division, or any other regional air authority, and EPA in developing applicable implementation plans.

(b) The lead planning agency, the Department of Environmental Quality, the Lane Regional Air Pollution Authority for Lane County, or any other regional air authority, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development, amendment or revision (except administrative amendments or revisions) of an applicable implementation plan including, the motor vehicle emissions budget. The MPO, ODOT, or any other party responsible for making conformity determinations pursuant to this rule, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the transportation plan, the TIP, and any determinations of conformity under this rule. The project sponsor shall be responsible for assuring the conformity of FHWA/FTA projects and regionally significant projects approved or adopted by a recipient of funds under title 23.

(c) In addition to the lead agencies identified in subsection (b), other agencies entitled to participate in any interagency consultation process under OAR 340-252-0060 include the Oregon Department of Transportation, both headquarters and each affected regional or district office, each affected MPO, the Federal Highway Administration regional office in Portland and State division office in Salem, the Federal Transit Administration regional office, the Department of Environmental Quality, both headquarters and each affected regional office, any affected regional air authority, the United States Environmental Protection Agency, both headquarters and each affected regional or district office, and any other organization within the State responsible under State law for developing, submitting or implementing transportation-related provisions of an implementation plan, any local transit agency, and any city or county transportation or air quality agency.

(d) Specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

(A) The lead planning agency, the Department of Environmental Quality, the Lane Regional Air Pollution Authority, or any other regional air authority, shall be responsible for developing:

- (i) Emissions inventories;
- (ii) Emissions budgets;
- (iii) Attainment and maintenance demonstrations;
- (iv) Control strategy implementation plan revisions; and
- (v) Updated motor vehicle emissions factors.

(B) Unless otherwise agreed to in a Memorandum of Understanding between the affected jurisdictions and the Department of Environmental Quality, the Department of Environmental Quality shall be responsible for developing the transportation control measures to be included in SIPs in PM<sub>10</sub> nonattainment or maintenance areas, except Oakridge.

(C) The Lane Regional Air Pollution Authority shall be responsible for

developing transportation control measures for PM<sub>10</sub> in Oakridge.

(D) The MPO shall be responsible for:

- (i) Developing transportation plans and TIPs, and making corresponding conformity determinations;
- (ii) Making conformity determinations for the entire nonattainment or maintenance area including areas beyond the boundaries of the MPO where no agreement is in effect as required by **23 CFR § 450.310(f)**;
- (iii) Monitoring regionally significant projects;
- (iv) Developing and evaluating TCMs in ozone and/or carbon monoxide nonattainment and/or maintenance areas;
- (v) Providing technical and policy input on emissions budgets;
- (vi) Performing transportation modeling, regional emissions analyses and documenting timely implementation of TCMs as required for determining conformity;
- (vii) Distributing draft and final project environmental documents which have been prepared by the MPO to other agencies.

(E) The Oregon Department of Transportation (ODOT) shall be responsible for:

- (i) Providing technical input on proposed revisions to motor vehicle emissions factors;
- (ii) Distributing draft and final project environmental documents prepared by ODOT to other agencies;
- (iii) Convening air quality technical review meetings on specific projects when requested by other agencies or, as needed;
- (iv) Convening interagency consultation meetings required for purposes of making conformity determinations in non-metropolitan nonattainment or maintenance areas, except Grants Pass;
- (v) Making conformity determinations in non-metropolitan nonattainment or maintenance area, except Grants Pass.

(F) In addition to the responsibilities of MPOs described in paragraph (1)(d)

(D) above, the Rogue Valley Council of Governments shall be responsible for:

- (i) Convening interagency consultation meetings required for purposes of making conformity determinations in Grants Pass;
- (ii) Making conformity determinations in Grants Pass;

(G) The project sponsor shall be responsible for:

- (i) Assuring project level conformity including, where required by this rule, localized air quality analysis;
- (ii) Distributing draft and final project environmental documents prepared by the project sponsor to other agencies;

(H) FHWA and FTA shall be responsible for assuring timely action on final findings of conformity, after consultation with other agencies as provided in this section and **40 CFR § 93.105**.

(I) EPA shall be responsible for:

- (i) Reviewing and approving updated motor vehicle emissions factors; and
- (ii) Providing guidance on conformity criteria and procedures to agencies in interagency consultation.

(J) Any agency, by mutual agreement with another agency, may take on a role or responsibility assigned to that other agency under this rule.

(K) In metropolitan areas, any state or local transportation agency, or transit agency shall disclose regionally significant projects to the MPO standing committee established under OAR 340-252-0060(2)(b) in a timely manner.

(i) Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: adoption or amendment of a local jurisdiction's transportation system plan to include a proposed project, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract for final design or construction of the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with final design, permitting or construction of the project, or any approval needed for any facility that is dependent on the completion of the regionally significant project.

(ii) To help assure timely disclosure, the sponsor of any potentially regionally significant project shall disclose to the MPO annually on or before July 1.

(iii) In the case of any regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of OAR 340-252-0220.

(L) In non-metropolitan areas, except Grants Pass, any state or local transportation agency, or transit agency shall disclose regionally significant projects to ODOT in a timely manner.

(i) Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: adoption or amendment of a local jurisdiction's transportation system plan to include a proposed project, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract for final design or construction of the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with final design, permitting or construction of the project, or any approval needed for any facility that is dependent on the completion of the regionally significant project.

(ii) To help assure timely disclosure, the sponsor of any potentially regionally significant project shall disclose to ODOT as requested.

Requests for disclosure shall be made in writing to any affected state or local transportation or transit agency.

(M) In Grants Pass, any state or local transportation agency, or transit agency shall disclose regionally significant projects to RVCOG in a timely manner.

(i) Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: adoption or amendment of a local jurisdiction's transportation system plan to include a proposed project, the

issuance of administrative permits for the facility or for construction of the facility, the execution of a contract for final design or construction of the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with final design, permitting or construction of the project, or any approval needed for any facility that is dependent on the completion of the regionally significant project.

(ii) To help assure timely disclosure, the sponsor of any potentially regionally significant project shall disclose to RVCOG as requested.

Requests for disclosure shall be made in writing to any affected state or local transportation or transit agency.

(2) Interagency consultation: specific processes.

(a) State Implementation Plan development.

(A) It shall be the affirmative responsibility of the agency with the responsibility for preparing or revising a State Implementation Plan, except for administrative amendments or revisions, to initiate the consultation process by notifying other participants and convening a working group made up of representatives of each affected agency in the consultation process including representatives of the public, as appropriate. Such working group shall be chaired by a representative of the convening agency, unless the group by consensus selects another chair. The working group shall make decisions by majority vote. Such working group shall begin consultation meetings early in the process of decision on the final SIP, and shall prepare all drafts of the final SIP, the emissions budget, and major supporting documents, or appoint the representatives or agencies that will prepare such drafts. Such working group shall be made up of policy level officials, and shall be assisted by such technical committees or technical engineering, planning, public works, air quality, and administrative staff from the member agencies as the working group deems appropriate. The chair, or his/her designee, shall set the agenda for meetings and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(B) Regular consultation on development or amendment of an implementation plan shall include meetings of the working group at regularly scheduled intervals, no less frequently than quarterly. In addition, technical meetings shall be convened as necessary.

(C) Each lead agency with the responsibility for preparing the SIP subject to the interagency consultation process, shall confer through the working group process with all other agencies identified under subsection (1)(c) of this rule with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, and, consider the views of each such agency and respond to substantive comments in a timely, substantive written manner prior to making a recommendation to the Environmental Quality Commission for a final decision on such document. Such views and written response shall be made part of the record of any decision or action.

(D) The working group may appoint subcommittees to address specific issues pertaining to SIP development. Any recommendations of a subcommittee shall be considered by the working group.

(E) Meetings of the working group shall be open to the public. The agency with the responsibility of preparing the SIP shall provide timely written notification of working group meetings to those members of the public who have requested such notification. In addition, reasonable efforts shall be made to identify and provide timely written notification to interested parties.

(b) Metropolitan Areas. There shall be a standing committee for purposes of consultation required under this rule by an MPO. The standing committee shall advise the MPO. The committee shall include representatives from state and regional air quality planning agencies and State and local transportation and transit agencies. The standing committee shall consult with EPA and USDOT. If not designated by committee bylaws, the standing committee shall select its chair by majority vote.

(A) For MPOs designated prior to the effective date of this rule, the following standing committees are designated for purposes of interagency consultation required by this rule:

(i) Lane Council of Governments: Transportation Planning Committee;

(ii) Salem-Keizer Area Transportation Study: Technical Advisory Committee;

(iii) Metro: Transportation Policy Alternatives Committee;

(iv) Rogue Valley Council of Governments: Technical Advisory Committee.

(B) Any MPO designated subsequent to the effective date of this rule shall establish a standing committee to meet the requirements of this rule.

(C) The standing committee shall hold meetings at least quarterly. The standing committee shall make decisions by majority vote.

(D) The standing committee shall be responsible for consultation on:

(i) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis, in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel;

(ii) Determining whether a project's design concept and scope have changed significantly since the plan and TIP conformity determination;

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this rule should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by OAR 340-252-0140(3)(a), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs; this consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Identifying, as required by OAR 340-252-0240(4) projects located at sites in PM<sub>10</sub> nonattainment or maintenance areas which have vehicle and roadway emission and dispersion characteristics which are essentially

- identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM<sub>10</sub> hot-spot analysis;
- (vi) Forecasting vehicle miles traveled, and any amendments thereto;
  - (vii) Making a determination, as required by OAR 340-252-0220(2), whether the project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;
  - (viii) Determining whether the project sponsor or MPO has demonstrated that the requirements of OAR 340-252-0170, 340-252-0190, and 340-252-0200 are satisfied without a particular mitigation or control measure, as provided in OAR 340-252-0260(4);
  - (ix) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in OAR 340-252-0050;
  - (x) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment or maintenance areas or air basins;
  - (xi) Assuring that plans for construction of regionally significant projects which are not FHWA/FTA projects, including projects for which alternative locations, design concept and scope, or the no-build option are still being considered, are disclosed to the MPO on a regular basis, and assuring that any changes to those plans are immediately disclosed;
  - (xii) The design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys);
  - (xiii) Development of transportation improvement programs;
  - (xiv) Development of regional transportation plans;
  - (xv) Establishing appropriate public participation opportunities for project-level conformity determinations required by this division, in the manner specified by **23 CFR Part 450**; and
  - (xvi) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in OAR 340-252-0270 or 340-252-0280.

(E) The chair of each standing committee, or his/her designee, shall set the agenda for all meetings. The chair of each standing committee shall assure that all agendas, and relevant documents and information are supplied to all participants in the consultation process in a timely manner prior to standing committee meetings which address any issues described in paragraph (2)(b) (D) of this rule.

(F) Such standing committees shall begin consultation meetings early in the process of decision on the final document, and shall review all drafts of the final document and major supporting documents. The standing committee shall consult with EPA and USDOT.

(G) The MPO shall confer with the standing committee and shall consult with

all other agencies identified under subsection (1)(c) of this rule with an interest in the document to be developed, shall provide all appropriate information to those agencies needed for meaningful input, and consider the views of each such agency. The MPO shall provide draft conformity determinations to standing committee members and shall allow a minimum of 30 days for standing committee members to comment. The 30 day comment period for standing committee members may occur concurrently with the public comment period. The MPO shall respond to substantive comments raised by a standing committee member in a timely, substantive written manner at least 7 days prior to any final decision by the MPO on such document. Such views and written response shall be made part of the record of any decision or action.

(H) The standing committee may, where appropriate, appoint a subcommittee to develop recommendations for consideration by the full committee.

(I) Meetings of the standing committee shall be open to the public. The MPO shall provide timely written notification of standing committee meetings to those members of the public who have requested such notification. In addition, reasonable efforts shall be made to identify and provide timely written notification to interested parties.

(c) An MPO, or any other party responsible for developing Transportation Control Measures, shall consult with affected parties listed in subsection (1)(c) in developing TCMs for inclusion in an applicable implementation plan.

(d) Non-metropolitan areas.

(A) In non-metropolitan areas the following interagency consultation procedures shall apply, unless otherwise agreed to by the affected parties in an Memorandum of Understanding, or specified in an applicable implementation plan:

(B) In each non-metropolitan nonattainment or maintenance area, except in Grants Pass, the Oregon Department of Transportation shall facilitate a meeting of the affected agencies listed in subsection (1)(c) of this rule prior to making conformity determinations to:

(i) determine which minor arterials or other transportation projects shall be considered "regionally significant";

(ii) determine which projects have undergone significant changes in design concept and scope since the regional emissions analysis was performed;

(iii) evaluate whether projects otherwise exempted from meeting the requirements of this rule should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason,

(iv) make a determination, as required by OAR 340-252-0140(3)(a), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs; this consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

- (v) Identify, as required by OAR 340-252-0240(4) projects located at sites in PM<sub>10</sub> nonattainment or maintenance areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM<sub>10</sub> hot-spot analysis;
- (vi) Confer on the forecast of vehicle miles traveled, and any amendments thereto;
- (vii) Determine whether the project sponsor has demonstrated that the requirements of OAR 340-252-0170, 340-252-0190, and 340-252-0200 are satisfied without a particular mitigation or control measure, as provided in OAR 340-252-0260(d);
- (viii) Evaluate events which will trigger new conformity determinations in addition to those triggering events established in OAR 340-252-0050;
- (ix) Assure that plans for construction of regionally significant projects which are not FHWA/FTA projects, including projects for which alternative locations, design concept and scope, or the no-build option are still being considered, are disclosed on a regular basis, and assuring that any changes to those plans are immediately disclosed.
- (x) Confer on the design, schedule, and funding of research and data collection efforts and transportation model development (e.g., household/travel transportation surveys).
- (xi) Establish appropriate public participation opportunities for project-level conformity determinations required by this rule in the manner specified by 23 CFR Part 450;
- (xii) Provide notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in OAR 340-252-0270 or 340-252-0280; and
- (xiii) Choose conformity tests and methodologies for non-metropolitan nonattainment and maintenance areas, as required by OAR 340-252-0100 (7)(b)(C).

(C) Notwithstanding paragraph (2)(d)(B) of this rule, the Rogue Valley Council of Governments shall be responsible for facilitating a meeting of the affected agencies listed in subsection (1)(c) of this rule prior to making conformity determinations for Grants Pass, Oregon for the purpose of consulting on the items listed in paragraph (2)(d)(B) of this rule.

(D) The Oregon Department of Transportation, or the Rogue Valley Council of Governments (RVCOG) in Grants Pass, shall consult with all other agencies identified under subsection (1)(c) of this rule with an interest in the document to be developed, shall provide all appropriate information to those agencies needed for meaningful input, and consider the views of each such agency. All draft regional conformity determinations as well as, supporting documentation shall be made available to agencies with an interest in the document and those agencies shall be given at least 30 days to submit comments on the draft document. ODOT, or RVCOG in Grants Pass, shall respond to substantive comments received from other agencies in a timely, substantive written manner at least 7 days prior to any final decision on such document. Such views and written response shall be made part of the record of any decision or action.

(E) Meetings hereby required shall be open to the public. Timely written notification of any meetings relating to conformity shall be provided to those members of the public who have requested such notification. In addition, reasonable efforts shall be made to identify and provide timely written notification to interested parties.

(F) If no transportation projects are proposed for the upcoming fiscal year, there is no obligation to facilitate the annual meeting required by paragraphs (2)(d)(B) & (C) of this rule.

(G) The meetings required by paragraphs (2)(d)(B)&(C) of this rule may take place using telecommunications equipment, where appropriate.

(e) An MPO or ODOT shall facilitate an annual statewide meeting, unless otherwise agreed upon by ODOT, DEQ and the MPOs, of the affected agencies listed in subsection (1)(c) to review procedures for regional emissions and hot-spot modeling.

(A) The members of each agency shall annually jointly review the procedures used by affected MPOs and agencies to determine that the requirements of OAR 340-252-0230 are being met by the appropriate agency.

(B) An MPO or ODOT shall facilitate a statewide meeting of parties listed in subsection (1)(c) of this rule to receive comment on the EPA guidelines on hot-spot modeling, to determine the adequacy of the guidelines, and to make recommendations for improved hot-spot modeling to the EPA Regional Administrator. DEQ, LRAPA, or any other regional air authority, may make recommendations for improved hot-spot modeling guidelines to the EPA Regional Administrator with the concurrence of ODOT. ODOT may make recommendations for improved hot-spot modeling guidelines to the EPA Regional Administrator with the concurrence of the affected air quality agency (e.g., DEQ, LRAPA or any other regional air authority).

(C) The MPO or ODOT shall determine whether the transportation modeling procedures are in compliance with the modeling requirements of OAR 340-252-0230. The DEQ or LRAPA (in Lane County), or any other regional air authority, shall determine whether the modeling procedures are in compliance with the air quality emissions modeling requirements of OAR 340-252-0230.

(D) The affected agencies shall evaluate and choose a model (or models) and associated methods and assumptions to be used in Hot-Spot Analyses and regional emissions analyses.

(f) FHWA and FTA will, for any proposed or anticipated transportation improvement program (TIP) or transportation plan conformity determination, provide a draft conformity determination to EPA for review and comment. FHWA and FTA shall allow a minimum of 14 days for EPA to respond. DOT shall respond in writing to any significant comments raised by EPA before making a final decision. In addition, where FHWA/FTA request any new or revised information to support a TIP or transportation plan conformity determination, FHWA/FTA shall either return the conformity determination for additional consultation under subsections (2)(b) or (2)(d) of this rule, or FHWA/FTA shall provide the new information to the agencies listed in subsection (1)(c) of this rule for review and comment. Where FHWA/FTA chooses to provide the new or additional information to the affected agencies listed in subsection (1)(c), FHWA and FTA shall allow for a minimum of 14 days

to respond to any new or revised supporting information; DOT shall respond in writing to any significant comments raised by the agencies consulted on the new or revised supporting information before making a final decision.

(g) Each agency subject to an interagency consultation process under this rule (including any Federal agency) shall provide each final document that is the product of such consultation process, together with all supporting information that has not been the subject of any previous consultation required by this rule, to each other agency that has participated in the consultation process within 14 days of adopting or approving such document or making such determination. Any such agency may supply a checklist of available supporting information, which such other participating agencies may use to request all or part of such supporting information, in lieu of generally distributing all supporting information.

(h) It shall be the affirmative responsibility of the agency with the responsibility for preparing a transportation plan or TIP revision which merely adds or deletes exempt projects listed in OAR 340-252-0270 to initiate the process by notifying other participants early in the process of decision on the final document and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(i) A meeting that is scheduled or required for another purpose may be used for the purposes of consultation required by this rule if the conformity consultation purpose is identified in the public notice for the meeting.

(j) It shall be the affirmative responsibility of a project sponsor to consult with the affected transportation and air quality agencies prior to making a project level conformity determination required by this rule.

(3) Resolving conflicts.

(a) Any conflict among State agencies or between State agencies and an MPO shall be escalated to the Governor if the conflict cannot be resolved by the heads of the involved agencies. In the first instance, such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

(b) A State agency, regional air authority, or MPO has 14 calendar days to appeal a determination of conformity, SIP submittal, or other decision under this division, to the Governor after the State agency, regional air authority, or MPO has been notified of the resolution of all comments on such proposed determination of conformity, SIP submittal, or decision. If an appeal is made to the Governor, the final conformity determination, SIP submittal, or policy decision must have the concurrence of the Governor. The appealing agency must provide notice of any appeal under this subsection to the lead agency. If an action is not appealed to the Governor within 14 days, the lead agency may proceed.

(c) The Governor may delegate the role of hearing any such appeal under this section and of deciding whether to concur in the conformity determination to another official or agency within the State, but not to the head or staff of the State air quality agency or any local air quality agency, the State department of transportation, a State transportation commission or board, the Environmental Quality Commission, any agency that has responsibility for only one of these functions, or an MPO.

(4) Public consultation procedures. Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public

involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with these requirements and those of **23 CFR 450.316(b)**. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in **49 CFR 7.95**. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0070 CONTENT OF TRANSPORTATION PLANS**

- (1) Transportation plans adopted after January 1, 1997 in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas. If the metropolitan planning area contains an urbanized area population greater than 200,000, the transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.
  - (a) The agency or organization developing the transportation plan, after consultation pursuant to OAR 340-252-0060, may choose any years to be horizon years, subject to the following restrictions:
    - (A) Horizon years may be no more than 10 years apart;
    - (B) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model;
    - (C) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year;
    - (D) The last horizon year must be the last year of the transportation plan's forecast period.
  - (b) For these horizon years:
    - (A) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and OAR 340-252-0060;
    - (B) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating

policies that are sufficient for modeling of their transit ridership. Additions and modifications to the transportation network shall be described sufficiently to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(C) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

- (2) Moderate areas reclassified to serious. Ozone or CO nonattainment areas which are reclassified from moderate to serious and have an urbanized population greater than 200,000 must meet the requirements of subsection (1)(a) of this rule within two years from the date of reclassification.
- (3) Transportation plans for other areas. Transportation plans for other areas must meet the requirements of subsection (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, the transportation system envisioned for the future must be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of OAR 340-252-0100 through 340-252-0200.
- (4) Savings. The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

#### **340-252-0080 RELATIONSHIP OF TRANSPORTATION PLAN AND TIP CONFORMITY WITH THE NEPA PROCESS**

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in OAR 340-252-0100 through 340-252-0200 for projects not from a TIP before NEPA process completion.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

#### **340-252-0090 FISCAL CONSTRAINTS FOR TRANSPORTATION PLANS AND TIPS**

Transportation plans and TIPS must be fiscally constrained consistent with DOT's metropolitan planning regulations at **23 CFR Part 450** in order to be found in conformity.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

#### **340-252-0100 CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS: GENERAL**

- (1) In order for each transportation plan, program, FHWA/FTA project, and regionally significant project approved or adopted by a recipient of funds under title 23 U.S.C. to be found to conform, the MPO and DOT must demonstrate that the applicable criteria and procedures in this division are satisfied, and the MPO and DOT must comply with all applicable conformity requirements of implementation plans, and of court orders for the area which pertain specifically to conformity. The criteria for

making conformity determinations differ based on the action under review (transportation plans, TIPS, and FHWA/FTA projects), the relevant pollutant(s), and the status of the implementation plan.

(2) **Table 1** indicates the criteria and procedures in OAR 340-252-0110 through 340-252-0200 which apply for transportation plans, TIPS, and FHWA/FTA projects. Sections (3) through (6) of this rule explain when the budget, emission reduction, and hot spot tests are required for each pollutant. Section (7) of this rule addresses isolated rural nonattainment and maintenance areas. **Table 1** follows:

Table 1.--Conformity Criteria

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All Actions at all times:

OAR 340-252-0110	Latest planning assumptions.
OAR 340-252-0120	Latest emissions model.
OAR 340-252-0130	Consultation.

Transportation Plan:

OAR 340-252-0140(2)	TCMs.	
OAR 340-252-0190 or OAR 252-0200		Emissions budget or Emission reduction.

TIP:

OAR 340-252-0140(3)	TCMs.	
OAR 340-252-0190 or OAR 252-0200		Emissions budget or Emission reduction.

Project (From a Conforming Plan and TIP):

OAR 340-252-0150	Currently conforming plan and TIP.
OAR 340-252-0160	Project from a conforming plan and TIP.
OAR 340-252-0170	CO and PM <sub>10</sub> hot spots.
OAR 340-252-0180	PM <sub>10</sub> control measures.

Project (Not From a Conforming Plan and TIP):

OAR 340-252-0140	TCMs.
OAR 340-252-0150	Currently conforming plan and TIP.
OAR 340-252-0170	CO and PM <sub>10</sub> hot spots.
OAR 340-252-0180	PM <sub>10</sub> control measures.
OAR 340-252-0190	Emissions budget or Emission reduction.

(3) Ozone nonattainment and maintenance areas. In addition to the criteria listed in **Table 1** in section (2) of this rule that are required to be satisfied at all times, in ozone nonattainment and maintenance areas conformity determinations must include a

demonstration that the budget and/or emission reduction tests are satisfied as described in the following:

- (a) In ozone nonattainment and maintenance areas the budget test must be satisfied as required by OAR 340-252-0190 for conformity determinations made:
  - (A) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or
  - (B) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.
- (b) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision (usually moderate and above areas), the emission reduction tests must be satisfied as required by OAR 340-252-0200 for conformity determinations made:
  - (A) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or
  - (B) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.
- (c) An ozone nonattainment area must satisfy the emission reduction test for NO<sub>x</sub>, as required by OAR 340-252-0200, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NO<sub>x</sub>. The implementation plan will be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation plan or plan submission contains an explicit NO<sub>x</sub> motor vehicle emissions budget that is intended to act as a ceiling on future NO<sub>x</sub> emissions, and the NO<sub>x</sub> motor vehicle emissions budget is a net reduction from NO<sub>x</sub> emissions levels in 1990.
- (d) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision (usually marginal and below areas) must satisfy one of the following requirements:
  - (A) The emission reduction tests required by OAR 340-252-0200; or
  - (B) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by OAR 340-252-0190 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in subsection (3)(a) of this rule).
- (e) Notwithstanding subsections (3)(a) and (3)(b) of this rule, moderate and above ozone nonattainment areas with three years of clean data that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements must

satisfy one of the following requirements:

- (A) The emission reduction tests as required by OAR 340-252-0200;
- (B) The budget test as required by OAR 340-252-0190, using the motor vehicle emissions budgets in the submitted control strategy implementation plan (subject to the timing requirements of subsection (3)(a) of this rule); or
- (C) The budget test as required by OAR 340-252-0190, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data.

(4) CO nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in section (2) of this rule that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following:

(a) Projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by OAR 340-252-0170 and OAR 340-252-0240 at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot spot test required by OAR 340-252-0170(2).

(b) In CO nonattainment and maintenance areas the budget test must be satisfied as required by OAR 340-252-0190 for conformity determinations made:

(A) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(B) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(c) Except as provided in subsection (4)(d) of this rule, in CO nonattainment areas the emission reduction tests must be satisfied as required by OAR 340-252-0200 for conformity determinations made:

(A) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(B) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(d) CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an attainment demonstration (e.g., moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) must satisfy one of the following requirements:

(A) The emission reduction tests required by OAR 340-252-0200; or

(B) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration,

and the budget test required by OAR 252-0190 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in subsection (4) (b) or this rule.

(5) PM<sub>10</sub> nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in section (2) of this rule that are required to be satisfied at all times, in PM<sub>10</sub> nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following:

(a) Projects in PM<sub>10</sub> nonattainment or maintenance areas must satisfy the hot spot test required by OAR 340-252-0170 and OAR 340-252-0240.

(b) In PM<sub>10</sub> nonattainment and maintenance areas the budget test must be satisfied as required by OAR 340-252-0190 for conformity determinations made:

(A) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(B) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(c) In PM<sub>10</sub> nonattainment areas the emission reduction tests must be satisfied as required by OAR 340-252-0200 for conformity determinations made:

(A) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes;

(B) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan; or

(C) If the submitted implementation plan revision is a demonstration of impracticability under CAA section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(6) NO<sub>2</sub> nonattainment and maintenance areas. In addition to the criteria listed in **Table 1** in section (2) of this rule that are required to be satisfied at all times, in NO<sub>2</sub> nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following:

(a) In NO<sub>2</sub> nonattainment and maintenance areas the budget test must be satisfied as required by OAR 340-252-0190 for conformity determinations made:

(A) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(B) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan

is adequate for transportation conformity purposes.

(b) In NO<sub>2</sub> nonattainment areas the emission reduction tests must be satisfied as required by OAR 340-252-0200 for conformity determinations made:

(A) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(B) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(7) Non-metropolitan nonattainment and maintenance areas. This section applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This paragraph does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(a) FHWA/FTA projects in all non-metropolitan nonattainment and maintenance areas must satisfy the requirements of OAR 340-252-0110 through 340-252-0130, OAR 340-252-0140(4), and OAR 340-252-0170 through 340-252-0180. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of OAR 340-252-0170(2) ("Localized CO and PM<sub>10</sub> violations (hot spots)").

(b) Non-metropolitan nonattainment and maintenance areas are subject to the budget and/or emission reduction tests as described in OAR 340-252-0100(3) through 340-250-0100(6), with the following modifications:

(A) When the requirements OAR 340-252-0190 and 340-252-0200 apply to non-metropolitan nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the non-metropolitan nonattainment or maintenance area.

(B) In non-metropolitan nonattainment and maintenance areas that are subject to OAR 340-252-0190, FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the timeframe of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one of the following requirements:

(i) OAR 340-252-0190;

(ii) OAR 340-252-0200 (including regional emissions analysis for NOX in all ozone nonattainment and maintenance areas, notwithstanding OAR 340-252-0200(4)(b)); or

(iii) As demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other

regionally significant projects expected in the area in the timeframe of the statewide transportation plan, must not cause or contribute to a new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.

(C) The choice of requirements in paragraph (7)(b)(B) of this rule and the methodology used to meet the requirements of paragraph (7)(b)(B)(iii) of this rule must be determined through the interagency consultation process required in OAR 340-252-0060(2)(d)(B)(xiii) through which the relevant recipients of title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the State air quality agency, and the State department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the Governor consistent with the procedure in OAR 340-252-0060(3), which applies for any State air agency comments on a conformity determination.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0110 CRITERIA AND PROCEDURES: LATEST PLANNING ASSUMPTIONS**

- (1) The conformity determination, with respect to all other applicable criteria in OAR 340-252-0120 through 340-252-0200, must be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of sections (2) through (6) of this rule.
- (2) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest planning assumptions about current and future background concentrations.
- (3) The conformity determination for each transportation plan and TIP must discuss how transit operating policies, including fares and service levels, and assumed transit ridership have changed since the previous conformity determination.
- (4) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.
- (5) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures which have already been implemented.
- (6) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by OAR 340-252-0060.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0120 CRITERIA AND PROCEDURES: LATEST EMISSIONS MODEL**

- (1) The conformity determination must be based on the latest emission estimation model

available. This criterion applies during all periods. It is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

- (2) EPA will consult with DOT to establish a grace period following the specification of any new model.
  - (a) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the Federal Register.
  - (b) The length of the grace period will depend on the degree of change in the model and the scope of replanning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the Federal Register.
- (3) Transportation plan and TIP conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the analysis was begun during the grace period or before the Federal Register notice of availability, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0130 CRITERIA AND PROCEDURES: CONSULTATION**

Conformity must be determined according to the consultation procedures in OAR 340-252-0060 and in the applicable implementation plan, and according to the public involvement procedures established in compliance with **23 CFR part 450**. Until the implementation plan revision required by **40 CFR 51.390** is fully approved by EPA, the conformity determination must be made according to OAR 340-252-0060(1)(b) and 340-252-0060(4) and the requirements of **23 CFR part 450**.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0140 CRITERIA AND PROCEDURES: TIMELY IMPLEMENTATION OF TCMS**

- (1) The transportation plan, TIP or FHWA/FTA project or regionally significant projects approved or adopted by a recipient of funds under **Title 23 U.S.C.** which is not from a conforming plan and TIP must provide for the timely implementation of TCMS from the applicable implementation plan.
- (2) For transportation plans, this criterion is satisfied if the following two conditions are met:
  - (a) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMS in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan. Timely implementation of TCMS which are not

eligible for funding under **Title 23 U.S.C.** or the Federal Transit Laws is required where failure to implement such measure(s) will jeopardize attainment or maintenance of a standard.

(b) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(3) For TIPs, this criterion is satisfied if the following conditions are met:

(a) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined after consultation in accordance with OAR 340-252-0060 that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding of TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area. Timely implementation of TCMs which are not eligible for funding under title 23 U.S.C. or the Federal Transit Laws is required where attainment or maintenance of a standard is jeopardized.

(b) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding intended for air quality improvement projects, e.g., the Congestion Mitigation and Air Quality Improvement Program.

(c) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(4) For FHWA/FTA projects and regionally significant projects approved or adopted by a recipient of funds under **Title 23 U.S.C.** which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0150 CRITERIA AND PROCEDURES: CURRENTLY CONFORMING TRANSPORTATION PLAN AND TIP**

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

(1) Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of OAR 340-252-0050.

(2) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this division are satisfied.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0160 CRITERIA AND PROCEDURES: PROJECTS FROM A PLAN AND TIP**

- (1) The project must come from a conforming plan and program. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of OAR 340-252-0100 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of section (2) of this rule and from a conforming program if it meets the requirements of section (3) of this rule. Special provisions for TCMs in an applicable implementation plan are provided in section (4) of this rule.
- (2) A project is considered to be from a conforming transportation plan if one of the following conditions applies:
  - (a) For projects which are required to be identified in the transportation plan in order to satisfy OAR 340-252-0070 ("Content of Transportation Plans"), the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or
  - (b) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.
- (3) A project is considered to be from a conforming program if the following conditions are met:
  - (a) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions, and the project design concept and scope have not changed significantly from those which were described in the TIP; and
  - (b) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by OAR 340-252-0260(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.
- (4) TCMs. This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0170 CRITERIA AND PROCEDURES: LOCALIZED CO AND PM<sub>10</sub> VIOLATIONS (HOT-SPOTS)**

- (1) This section applies at all times. A FHWA/FTA project and any regionally significant project approved or adopted by a recipient of funds under title 23 U.S.C. must not cause or contribute to any new localized CO or PM<sub>10</sub> violations or increase the frequency or severity of any existing CO or PM<sub>10</sub> violations in CO and PM<sub>10</sub> nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated

that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of OAR 340-252-0060(2)(e) and the methodology requirements of OAR 340-252-0240.

- (2) This section applies for CO nonattainment areas as described in OAR 340-252-0100 (4)(a). Each project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas) according to the consultation requirements of OAR 340-252-0060(2)(e) and the methodology requirements of OAR 340-252-00240. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **0-252-0180 CRITERIA AND PROCEDURES: COMPLIANCE WITH PM<sub>10</sub> CONTROL MEASURES**

A FHWA/FTA project and any regionally significant project approved or adopted by a recipient of funds under **Title 23 U.S.C.** must comply with PM<sub>10</sub> control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM<sub>10</sub> emissions from the construction activities and/or normal use and operation associated with the project) contained in the applicable implementation plan.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0190 CRITERIA AND PROCEDURES: MOTOR VEHICLE EMISSIONS BUDGET**

- (1) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in OAR 340-252-0100(3) through (7). This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in paragraph (c) of this section are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.
- (2) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the last year of the transportation plan's forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:
  - (a) Until a maintenance plan is submitted:
    - (A) Emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and

(B) Emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year. For example, emissions in years after the attainment year for which the implementation plan does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(b) When a maintenance plan has been submitted:

(A) Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by OAR 340-252-0060 shall determine what must be considered in order to make such a finding;

(B) For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan; and

(C) If an approved control strategy implementation plan has established motor vehicle emissions budgets for years in the timeframe of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years.

(3) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in OAR 340-252-0020(2) for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

(4) Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan.

(a) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of OAR 340-252-0230 and 340-252-0060(2)(e).

(b) The regional emissions analysis may be performed for any years in the timeframe of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan) and the last year of the plan's forecast period. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in section (2) of this rule, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(5) motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans.

(a) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, or beginning 45 days after the control strategy implementation plan revision or maintenance plan has been submitted (unless EPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes). However, submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the period of years addressed by the approved implementation plan.

(b) If EPA has declared an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes, the inadequate budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previous approved implementation plans or implementation plan submissions with motor vehicle emissions budgets, the emission reduction tests required by OAR 340-252-0200 must be satisfied.

(c) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes more than 45 days after its submission to EPA, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy OAR 340-252-0150 and 340-252-0160, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(d) EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

- (A) The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a State public hearing;
- (B) Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, State, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;
- (C) The motor vehicle emissions budget(s) is clearly identified and precisely quantified;
- (D) The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);
- (E) The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and
- (F) Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously

submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see OAR 340-252-0030 for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(e) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA will review the State's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA will document its consideration of such comments and responses in a letter to the State indicating the adequacy of the submitted motor vehicle emissions budget.

(f) When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations will be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will cause or contribute to a new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

#### **340-252-0200 CRITERIA AND PROCEDURES: EMISSION REDUCTIONS IN AREAS WITHOUT MOTOR VEHICLE EMISSIONS BUDGETS**

- (1) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must contribute to emissions reductions. This criterion applies as described in OAR 340-252-0100(3) through 340-252-0100(7). It applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.
- (2) This criterion may be met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA section 182(b)(1) and in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas if a regional emissions analysis that satisfies the requirements of OAR 340-252-0230 and sections (5) through (8) of this rule demonstrates that for each analysis year and for each of the pollutants described in section (4) of this rule:
  - (a) The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and
  - (b) The emissions predicted in the "Action" scenario are lower than 1990 emissions by any nonzero amount.
- (3) This criterion may be met in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas; marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA section 182(b)(1); and moderate with design value less than 12.7 ppm and below CO nonattainment areas if a regional emissions analysis that satisfies the requirements of OAR 340-252-0230 and sections (5) through (8) of this rule demonstrates that for each analysis year and for each of the pollutants described in section (4) of this rule, one of the following requirements is met:
  - (a) The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be

- true in the periods between the analysis years; or
- (b) The emissions predicted in the "Action" scenario are not greater than baseline emissions. Baseline emissions are those estimated to have occurred during calendar year 1990, unless an implementation plan revision defines the baseline emissions for a PM<sub>10</sub> area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.
- (4) Pollutants. The regional emissions analysis must be performed for the following pollutants:
- (a) VOC in ozone areas;
  - (b) NO<sub>x</sub> in ozone areas, unless the EPA Administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment;
  - (c) CO in CO areas;
  - (d) PM<sub>10</sub> in PM<sub>10</sub> areas;
  - (e) Transportation-related precursors of PM<sub>10</sub> in PM<sub>10</sub> nonattainment and maintenance areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT; and
  - (f) NO<sub>x</sub> in NO<sub>2</sub> areas.
- (5) Analysis years. The regional emissions analysis must be performed for analysis years that are no more than ten years apart. The first analysis year must be no more than five years beyond the year in which the conformity determination is being made. The last year of a transportation plan's forecast period must also be an analysis year.
- (6) "Baseline" scenario. The regional emissions analysis required by sections (2) and (3) of this rule must estimate the emissions that would result from the "Baseline" scenario in each analysis year. The "Baseline" scenario must be defined for each of the analysis years. The "Baseline" scenario is the future transportation system that will result from current programs, including the following (except that exempt projects listed in OAR 340-252-0270 and projects exempt from regional emissions analysis as listed in OAR 340-252-0280 need not be explicitly considered):
- (a) All in-place regionally significant highway and transit facilities, services and activities;
  - (b) All ongoing travel demand management or transportation system management activities; and
  - (c) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.
- (7) "Action" scenario. The regional emissions analysis required by sections (2) and (3) of this rule must estimate the emissions that would result from the "Action" scenario in each analysis year. The "Action" scenario must be defined for each of the analysis years. The "Action" scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "Action" scenario must include the following (except that exempt projects listed in OAR 340-252-0270 and projects exempt from

regional emissions analysis as listed in OAR 340-252-0280 need not be explicitly considered):

- (a) All facilities, services, and activities in the "Baseline" scenario;
  - (b) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;
  - (c) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;
  - (d) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;
  - (e) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
  - (f) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.
- (8) Projects not from a conforming transportation plan and TIP. For the regional emissions analysis required by sections (2) and (3) of this rule, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "Baseline" scenario must include the project with its original design concept and scope, and the "Action" scenario must include the project with its new design concept and scope.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0210 CONSEQUENCES OF CONTROL STRATEGY IMPLEMENTATION PLAN FAILURES**

- (1) Disapprovals.
  - (a) If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179 (b)(1) of the CAA. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.
  - (b) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, then beginning 120 days after such disapproval, only projects in the first three years of the currently conforming

transportation plan and TIP may be found to conform. This means that beginning 120 days after disapproval without a protective finding, no transportation plan, TIP, or project not in the first three years of the currently conforming plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined. During the first 120 days following EPA's disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy implementation plan, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes, pursuant to OAR 340-252-0100.

(c) In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

- (2) Failure to submit and incompleteness. In areas where EPA notifies the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision (either of which initiates the sanction process under CAA sections 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.
- (3) Federal implementation plans. If EPA promulgates a Federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

**340-252-0220 REQUIREMENTS FOR ADOPTION OR APPROVAL OF PROJECTS BY OTHER RECIPIENTS OF FUNDS DESIGNATED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT LAWS**

- (1) Except as provided in section 2 of this rule, no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:
  - (a) The project was included in the first three years of the most recently conforming transportation plan and TIP (or the conformity determination's regional emissions analyses), even if conformity status is currently lapsed; and the project's design concept and scope has not changed significantly from those analyses;
  - (b) There is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of OAR 340-252-0190 and/or 340-252-0200 for a project not from a

- conforming transportation plan and TIP); or
- (c) Where applicable, as established in OAR 340-252-0240, project level hot-spot analysis criteria have been satisfied.
- (2) In non-metropolitan nonattainment and maintenance areas subject to OAR 340-252-0100(7), no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:
- (a) The project was included in the regional emissions analysis supporting the most recent conformity determination for the portion of the statewide transportation plan and TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly;
- (b) A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements of OAR 340-252-0190 and/or 340-252-0200 for projects not from a conforming transportation plan and TIP); or
- (c) Where applicable, as established in OAR 340-252-0240, project level hot-spot analysis criteria have been satisfied.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0230 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED EMISSIONS**

- (1) General requirements.
- (a) The regional emissions analysis required by OAR 340-252-0190 and 340-252-0200 for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by OAR 340-252-0060. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.
- (b) The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.
- (c) Emissions reduction credit from projects, programs, or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless:
- (A) The regulatory action is already adopted by the enforcing jurisdiction;

- (B) The project, program, or activity is included in the applicable implementation plan;
  - (C) The control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of OAR 340-252-0190 contains a written commitment to the project, program, or activity by the agency with authority to implement it; or
  - (D) EPA has approved an opt-in to a Federally enforced program, EPA has promulgated the program (if the control program is a Federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.
- (d) Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.
- (A) Persons or entities voluntarily committing to control measures must comply with the obligations of such commitments.
  - (B) The conformity implementation plan revision required in 40 CFR 51.390 must provide that written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must be fulfilled.
- (e) A regional emissions analysis for the purpose of satisfying the requirements of OAR 340-252-0200 must make the same assumptions in both the "Baseline" and "Action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.
- (f) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation according to OAR 340-252-0060(2)(e) to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.
- (g) Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.
- (2) Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas and serious CO nonattainment areas must meet the requirements of subsections (2)(a) through (c) of this rule if their metropolitan planning area contains an urbanized area population over 200,000.
- (a) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation.

These procedures, methods, and practices are available from DOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by OAR 340-252-0060(2)(e). Network-based travel models must at a minimum satisfy the following requirements:

- (A) Network-based travel models must be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than 10 years prior to the date of the conformity determination. Model forecasts must be analyzed for reasonableness and compared to historical trends and other factors, and the results must be documented;
- (B) Land use, population, employment, and other network-based travel model assumptions must be documented and based on the best available information;
- (C) Scenarios of land development and use must be consistent with the future transportation system alternatives for which emissions are being estimated. The distribution of employment and residences for different transportation options must be reasonable;
- (D) A capacity-sensitive assignment methodology must be used, and emissions estimates must be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;
- (E) Zone-to-zone travel impedances used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits; and
- (F) Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and other factors affecting travel choices.

(b) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network-based travel model.

(c) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures of OAR 340-252-0060(2)(e).

(3) All other metropolitan nonattainment areas shall comply with the following requirements after January 1, 1996:

- (a) Estimates of regional transportation-related emissions used to support

conformity determinations must be made according to the procedures which meet the requirements in sections (3)(b) and (c) of this rule.

(b) Procedures which satisfy some or all of the requirements of section (2) of this rule shall be used in all areas not subject to section (2) of this rule where those procedures have been the previous practice of the MPO.

(c) At a minimum, these areas shall estimate emissions using methodologies and procedures which possess the following attributes:

(A) A network based travel demand model which describes the network in sufficient detail to capture at least 85 percent of the vehicle trips;

(B) An ability to generate plausible vehicle trip tables based on current and future land uses and travel options in the region;

(C) Software, or other appropriate procedures, to assign the full spectrum of vehicular traffic including, where possible, truck traffic, to the network;

(D) Other modes of travel shall be estimated in accordance with reasonable professional practice either quantitatively or qualitatively;

(E) Sufficient field observations of traffic (e.g. average speeds, average daily volumes, average peaking factors for specific links that are directly identifiable in the network) to calibrate the traffic assignment for base year data;

(F) Software, or other appropriate procedures, to calculate emissions based on network flows and link speeds, and as necessary, to refine speed estimates from assigned traffic;

(G) Software, or other appropriate procedures, to account for additional "off-model" transportation emissions; and

(H) estimates of future land uses sufficient to allow projections of future emissions.

(4)  $PM_{10}$  from construction-related fugitive dust.

(a) For areas in which the implementation plan does not identify construction-related fugitive  $PM_{10}$  as a contributor to the nonattainment problem, the fugitive  $PM_{10}$  emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(b) In  $PM_{10}$  nonattainment and maintenance areas with implementation plans which identify construction-related fugitive  $PM_{10}$  as a contributor to the nonattainment problem, the regional  $PM_{10}$  emissions analysis shall consider construction-related fugitive  $PM_{10}$  and shall account for the level of construction activity, the fugitive  $PM_{10}$  control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(5) Reliance on previous regional emissions analysis.

(a) The TIP may be demonstrated to satisfy the requirements of OAR 340-252-0190 ("motor vehicle emissions budget") or 340-252-0200 ("Emission reductions in areas without motor vehicle emissions budgets") without new regional emissions analysis if the regional emissions analysis already performed for the plan also applies to the TIP. This requires a demonstration that:

(A) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan;

(B) All TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their

contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination; and

(C) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(b) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of OAR 340-252-0190 or 340-252-0200 without additional regional emissions analysis if allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan, and if the project is either:

(A) Not regionally significant; or

(B) Included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0240 PROCEDURES FOR DETERMINING LOCALIZED CO AND PM<sub>10</sub> CONCENTRATIONS (HOT-SPOT ANALYSIS)**

(1) CO Hot-spot analysis.

(a) The demonstrations required by OAR 340-252-0170 ("Localized CO and PM<sub>10</sub> violations") must be based on quantitative analysis using the applicable air quality models, data bases, and other requirements specified in **40 CFR part 51, Appendix W (Guideline on Air Quality Models)**. These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in OAR 252-0060 and approved by the EPA Regional Administrator are used:

(A) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation;

(B) For projects affecting intersections that are at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new FHWA/FTA funded or approved project in the vicinity;

(C) For any project affecting one or more of the top three intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan; and

(D) For any project affecting one or more of the top three intersections in the nonattainment or maintenance area with the worst level of service, as identified in the applicable implementation plan.

(b) In cases other than those described in subsection (1)(a) of this rule, the demonstrations required by OAR 340-252-0170 may be based on either:

(A) Quantitative methods that represent reasonable and common professional practice; or

(B) A qualitative consideration of local factors, if this can provide a clear

demonstration that the requirements of OAR 340-252-0170 are met.

(2) PM<sub>10</sub> Hot-spot analysis.

(a) The hot-spot demonstration required by OAR 340-252-0170 must be based on quantitative analysis methods for the following types of projects:

(A) Projects which are located at sites at which violations have been verified by monitoring;

(B) Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and

(C) New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

(b) Where quantitative analysis methods are not required, the demonstration required by OAR 340-252-0170 may be based on a qualitative consideration of local factors.

(c) The identification of the sites described in paragraphs (2)(a)(A) and (2)(a)(B) of this rule, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in OAR 340-252-0060. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels.

(d) The requirements for quantitative analysis contained in this section (2) will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

(3) General requirements.

(a) Estimated pollutant concentrations must be based on the total emissions burden which may result from the implementation of the project, summed together with future background concentrations. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

(b) Hot-Spot Analyses must include the entire project, and may be performed only after the major design features which will significantly impact concentrations have been identified. The future background concentration should be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors.

(c) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(d) PM<sub>10</sub> or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to implement such measures, as required by OAR 340-252-0260 (1).

(e) CO and PM<sub>10</sub> Hot-Spot Analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

**340-252-0250 USING THE MOTOR VEHICLE EMISSIONS BUDGET IN THE APPLICABLE IMPLEMENTATION PLAN (OR IMPLEMENTATION PLAN SUBMISSION)**

- (1) In interpreting an applicable implementation plan, or implementation plan submission with respect to its Motor Vehicle Emissions Budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan, or submission. Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO or ODOT may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans, or submissions, which demonstrate that after implementation of control measures in the implementation plan:
  - (a) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;
  - (b) Emissions from all sources will result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or
  - (c) Emissions will be lower than needed to provide for continued maintenance.
- (2) If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin", the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.
- (3) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan, or implementation plan submission, allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes mechanisms for such trades.
- (4) If the applicable implementation plan, or implementation plan submission, estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan, or implementation plan submission, explicitly indicates an intent to create such subarea budgets for purposes of conformity.
- (5) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

**340-252-0260 ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES**

- (1) Prior to determining that a transportation project is in conformity, the MPO, ODOT, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws,

FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM<sub>10</sub> or CO impacts. Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by sections OAR 340-252-0190 ("motor vehicle emissions budget") and 340-252-0200 ("Emission reductions in areas without motor vehicle emissions budgets") or used in the project-level hot-spot analysis required by OAR 340-252-0170.

- (2) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.
- (3) The implementation plan revision required in 40 CFR 51.390 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.
- (4) If the MPO, ODOT or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements of OAR 340-252-0170, emission budget requirements of 340-252-0190, and emission reduction requirements of 340-252-0200 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under OAR 340-252-0060. The MPO and DOT must find that the transportation plan and TIP still satisfy the applicable requirements of OAR 340-252-0190 and 340-252-0200 and that the project still satisfies the requirements of OAR 340-252-0170, and therefore that the conformity determinations for the transportation plan, TIP and project are still valid. This finding is subject to the applicable public consultation requirements in OAR 340252-0060(4) for conformity determinations for projects.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0270 EXEMPT PROJECTS**

Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 2 are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 of this section is not exempt if the MPO or ODOT in consultation with other agencies under OAR 340-252-0060(3)(b)&(d), and the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation. **Table 2** follows:

Table 2 - Exempt projects

Railroad/highway crossing.  
Hazard elimination program.  
Safer non-Federal-aid system roads.  
Traffic control devices and operating assistance other than signalization projects.  
Shoulder improvements.  
Increasing sight distance.  
Safety improvement program.  
Railroad/highway crossing warning devices.  
Guardrails, median barriers, crash cushions.  
Pavement resurfacing and/or rehabilitation.  
Pavement marking demonstration.  
Emergency relief (23 U.S.C. 125).  
Fencing.  
Skid treatments.  
Safety roadside rest areas.  
Adding medians.  
Truck climbing lanes outside the urbanized area.  
Lighting improvements.  
Widening narrow pavements or reconstructing bridges (no additional travel lanes).  
Emergency truck pullovers.

#### MASS TRANSIT

Operating assistance to transit agencies.  
Purchase of support vehicles.  
Rehabilitation of transit vehicles.<sup>1</sup>  
Purchase of office, shop, and operating equipment for existing facilities.  
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).  
Construction or renovation of power, signal, and communications systems.  
Construction of small passenger shelters and information kiosks.  
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).  
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.  
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet.<sup>1</sup>  
Construction of new bus or rail storage/maintenance facilities categorically excluded in **23 CFR 771**.

#### AIR QUALITY

Continuation of ride-sharing and van-pooling promotion activities at current levels.  
Bicycle and pedestrian facilities.

#### OTHER

Specific activities which do not involve or lead directly to construction such as:

Planning and technical studies.  
Grants for training and research programs.  
Planning activities conducted pursuant to titles 23 and 49 U.S.C.  
Federal-aid systems revisions.  
Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.  
Noise attenuation.  
Emergency or hardship advance land acquisitions (**23 CFR 712** or **23 CFR 771**).  
Acquisition of scenic easements.  
Plantings, landscaping, etc.  
Sign removal.  
Directional and informational signs.  
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).  
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

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**Note:** <sup>1</sup> In PM<sub>10</sub> nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0280 PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES**

Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 3 of this section are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM<sub>10</sub> concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in **Table 3** is not exempt from regional emissions analysis if the MPO or ODOT in consultation with other agencies (see OAR 340-252-0060), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. **Table 3** follows:

Table 3 - Projects Exempt From Regional Emissions Analyses

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Intersection channelization projects.  
Intersection signalization projects at individual intersections.  
Interchange reconfiguration projects.  
Changes in vertical and horizontal alignment.  
Truck size and weight inspection stations.  
Bus terminals and transfer points.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-252-0290 TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS**

Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this division. However, all subsequent regional emissions analyses required by OAR 340-252-0190 and 340-252-0200 for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

## **DIVISION 256**

### **MOTOR VEHICLES**

#### **340-256-0010 Definitions**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

- (1) "Basic test" means an inspection and maintenance program designed to measure exhaust emission levels during an unloaded idle or an unloaded raised idle mode as described in OAR 340-256-0340.
- (2) "Carbon dioxide" means a compound consisting of the chemical formula (CO<sub>2</sub>).
- (3) "Carbon monoxide" means a compound consisting of the chemical formula (CO).
- (4) "Certificate of Compliance" means a certification issued by a Private Business Fleet, a Public Agency Fleet Vehicle Emission Inspector, a Vehicle Emissions Inspector employed by the Department of Environmental Quality, or an Independent Contractor that the vehicle identified on the certificate is equipped with the required functioning motor vehicle pollution control systems and otherwise complies with the Commission's emission control criteria, standards, and rules
- (5) "Certified Repair Facility" means an automotive repair facility, possessing a current and valid certificate issued by the Department, that employs automotive technicians certified by the Department's Automotive Technician Emission Training Program (ATETP).
- (6) "Clean-Screening" means a procedure by which the Department determines that a vehicle has acceptable emissions and then allows the vehicle owner to bypass the traditional centralized emissions inspection station test. The Department's decision may be the result of remotely sensing the emissions, the status of emissions equipment, or another means determined by the Department.
- (7) "Commission" means the Environmental Quality Commission.
- (8) "Crankcase emissions" means substances emitted directly to the atmosphere from any opening leading to the crankcase of a motor vehicle engine.
- (9) "Dealer" means any person who is engaged wholly or in part in the business of buying, selling, or exchanging, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, motor vehicles.
- (10) "Dealership" means a business involved in the sale of vehicles that is franchised with an automobile manufacturer as defined in ORS 650.120(1).

- (11) "Department" means the Department of Environmental Quality.
- (12) "Diesel motor vehicle" means a motor vehicle powered by a compression-ignition internal combustion engine.
- (13) "Director" means the director of the Department.
- (14) "DMV" means the Driver and Motor Vehicle Division of the Oregon Department of Transportation.
- (15) "Electric vehicle" means a motor vehicle that uses a propulsive unit powered exclusively by electricity.
- (16) "Emissions Inspection Station" means an inspection facility, operated by the Department of Environmental Quality or an Independent Contractor, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this Division.
- (17) "Enhanced test" means an inspection and maintenance program designed to measure exhaust and fuel evaporative system emissions levels using a loaded transient driving cycle and other measurement techniques as described in OAR 340-256-0350.
- (18) "Exhaust emissions" means substances emitted into the atmosphere from any opening downstream from the exhaust ports of a motor vehicle engine.
- (19) "Factory-installed motor vehicle pollution control system" means a motor vehicle pollution control system installed by the vehicle or engine manufacturer to comply with United States motor vehicle emission control laws and regulations.
- (20) "Gas analytical system" means a device that measures the amount of contaminants in the exhaust emissions of a motor vehicle, and that has been issued a license by the Department pursuant to OAR 340-256-0450 and ORS 468A.380.
- (21) "Gaseous fuel" means, but is not limited to, liquefied petroleum gases and natural gases in liquefied or gaseous forms.
- (22) "Gasoline motor vehicle" means a motor vehicle powered by a spark-ignition internal combustion engine.
- (23) "GPM" means Grams Per Mile.
- (24) "Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.
- (25) "Heavy duty motor vehicle" means any motor vehicle rated at more than 8500 pounds GVWR or that has an actual vehicle curb weight as delivered to the ultimate purchaser of 6000 pounds or over.
- (26) "Hydrocarbon gases" means a class of chemical compounds consisting of hydrogen and carbon.
- (27) "Idle speed" means the unloaded engine speed when accelerator pedal is fully released.
- (28) "Independent Contractor" means any person with whom the Department enters into an agreement providing for the construction, equipment, maintenance, personnel, management or operation of emissions inspection stations or activities pursuant to ORS

468A.370.

(29) "Inspection and Maintenance Program (I/M) means a program of conducting regular inspections of motor vehicles, including measurement of air contaminants in the vehicle exhaust and an inspection of emission control systems, to identify vehicles that do not meet the standards of this Division or that have malfunctioning, maladjusted or missing emission control systems, and, when necessary, of requiring the repair or adjustment of vehicles to make the emission control systems function as intended and to reduce tailpipe emissions of air contaminants.

(30) "In-use motor vehicle" means any motor vehicle which is not a new motor vehicle.

(31) "Light-duty motor vehicle" means any motor vehicle rated at 8500 pounds GVWR or less and has an actual vehicle curb weight as delivered to the ultimate purchaser of under 6000 pounds.

(32) "Medford-Ashland Air Quality Maintenance Area (AQMA)" has the meaning given in OAR 340-204-0010.

(33) "Model year" means the annual production period of new motor vehicles or new motor vehicle engines designated by the calendar year in which such period ends. If the manufacturer does not designate a production period, the model year with respect to such vehicles or engines means the 12-month period beginning January of the year in which production thereof begins.

(34) "Motorcycle" means any motor vehicle, including mopeds, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground and having a mass of 680 kilograms (1500 pounds) or less with manufacturer recommended fluids and nominal fuel capacity included.

(35) "Motor vehicle" means any self-propelled vehicle used for transporting persons or commodities on public roads.

(36) "Motor vehicle pollution control system" means equipment designed for installation on a motor vehicle for the purpose of reducing the pollutants emitted from the vehicle, or a system or engine adjustment or modification that causes a reduction of pollutants emitted from the vehicle, or a system or device that inhibits the introduction of fuels that can adversely affect the overall motor vehicle pollution control system.

(37) "Motor Vehicle Fleet Operation" means ownership, control, or management or any combination thereof by any person of five or more motor vehicles.

(38) "New motor vehicle" means a motor vehicle whose equitable or legal title has never been transferred to a person who in good faith purchases the motor vehicle for purposes other than resale.

(39) "Noise level" means the sound pressure level measured by use of metering equipment with an "A" frequency weighting network and reported as dBA.

(40) "OBD" means the On Board Diagnostic system in a vehicle that tracks the effectiveness of the vehicle's emissions control systems. These OBDII (or higher systems) have typically been placed on 1996 and newer motor vehicles.

(41) "OBD Test" means an emissions related test in which the vehicle's On Board Diagnostic computer is downloaded, supplying diagnostic information to evaluate the

effectiveness of the vehicle emissions control systems.

(42) "On-Site Vehicle Test" means an emissions related test that is conducted at the vehicle owner's location. Such test will be performed by DEQ using DEQ test equipment and is only available as a service for automobile dealerships.

(43) "Owner" means the person having all the incidents of ownership in a vehicle. Where the incidents of ownership are in different persons, it means the person, other than a security interest holder or lessor, entitled to the possession of a vehicle under a security agreement or a lease for a term of ten or more successive days.

(44) "Opacity" means the degree to which transmitted light is obscured, expressed in percent.

(45) "Oxides of Nitrogen" or NO<sub>x</sub> means oxides of nitrogen except nitrous oxides.

(46) "Person" means any individual, public or private corporation, political subdivision, agency, board, department, or bureau of the state, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever that is recognized by law as the subject of rights and duties.

(47) "Portland Vehicle Inspection Area" has the meaning given in OAR 340-204-0010.

(48) "PPM" means parts per million by volume.

(49) "Private Business Fleet" means ownership by any person of 100 or more Oregon-registered, in-use, motor vehicles, excluding those vehicles held primarily for the purpose of resale.

(50) "Private Business Fleet Vehicle Emissions Inspector" means any person employed on a full-time basis by a Private Business Fleet that possesses a current and valid license issued by the Department pursuant to OAR 340-256-0440 and ORS 468A.380.

(51) "Propulsion exhaust noise" means that noise created in the propulsion system of a motor vehicle that is emitted into the atmosphere from any opening downstream from the exhaust ports. This definition does not include exhaust noise from vehicle auxiliary equipment such as refrigeration units powered by a secondary motor.

(52) "Public Agency Fleet" means ownership of 50 or more government-owned vehicles registered pursuant to ORS 805.040.

(53) "Public Agency Fleet Vehicle Emissions Inspector" means any person employed on a full-time basis by a Public Agency Fleet that possesses a current and valid license issued by the Department pursuant to OAR 340-256-0440 and ORS 468A.380.

(54) "Public roads" means any street, alley, road, highway, freeway, thoroughfare, or section thereof used by the public or dedicated or appropriated to public use.

(55) "Regional Authority" means a regional air quality control authority established under the provisions of ORS 468A.005 to 468A.035, 468A.075, 468A.100 to 468A.130, and 468A.140 to 468A.175.

(56) "Remote Sensing" means a technique for determining the level of a vehicle's emissions without connecting equipment directly to the vehicle. The vehicle's emissions can be determined by either optically measuring the pollutants in the vehicle's exhaust plume, by remotely receiving a vehicle's emissions diagnostic information, or by other means determined by the Department.

(57) "Ringlemann Smoke Chart" means the Ringlemann Smoke Chart with instructions for use as published in May, 1967, by the U.S. Department of Interior, Bureau of Mines.

(58) "RPM" means engine crankshaft revolutions per minute.

(59) "Self-Service Test Lane" means a technique for vehicle testing offered by the Department where the vehicle owner or representative can perform an emissions test on the vehicle at a facility provided by the Department using remote sensing, plug-in OBD emissions testing, or other means designated by the Department.

(60) "Two-stroke cycle engine" means an engine in which combustion occurs, within any given cylinder, once each crankshaft revolution.

(61) "Vehicle Emission Inspector" means any person employed by the Department or an Independent Contractor that possesses a current and valid license issued by the Department pursuant to OAR 340-256-0440 and ORS 468A.380.

(62) "Visible Emissions" means those gases or particulates, excluding uncombined water, that separately or in combination are visible upon release to the outdoor atmosphere.

*State effective: 10/24/03; EPA effective: 1/21/2005*

### **340-256-0200 County Designations**

Pursuant to the requirements of ORS 468A.360, Clackamas, Columbia, Jackson, Marion, Multnomah, Washington and Yamhill counties are hereby designated by the Environmental Quality Commission as counties in which all motor vehicles registered therein, unless otherwise exempted by statute or by rules subsequently adopted by the Commission, shall be equipped with a motor vehicle pollution control system and shall comply with motor vehicle emission standards adopted by the Commission.

*State effective: 10/14/99; EPA effective: 1/21/2005*

### **340-256-0300 Scope**

Pursuant to ORS 467.030, 468A.350 to 468A.400, 803.350, and 815.295 to 815.325, OAR 340-256-0300 through 340-256-0465 establish the criteria, methods, and standards for inspecting motor vehicles to determine eligibility for obtaining a Certificate of Compliance or inspection. Any person subject to these rules must obtain a Certificate of Compliance as required under ORS 803.350. Any person seeking an exemption from the inspection requirements of this rule must prepare and submit to the Department or DMV a statement describing the grounds for the exemption on forms as provided by the Department or DMV.

(1) Except as provided in sections (3) and (4) of this rule, any person owning or leasing 1975 and newer model year vehicles in the Portland Vehicle Inspection Area must ensure the vehicles meet the requirements of one of the following emission tests:

(a) A light duty vehicle that is a 1975 through 1980 model year must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400 and 340-256-0430.

(b) A light duty vehicle that is a 1981 through 1995 model year must meet the

enhanced test requirements of OAR 340-256-0350 and 340-256-0410. These vehicles found to be safe but unable to be dynamometer tested due to drive line configuration and these vehicles equipped with All Wheel Drive (AWD) will meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400 and 340-256-0430.

- (c) A light duty vehicle that is a 1996 and newer model year must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test system, or other similar manufacturing problems, the vehicle must meet either the enhanced test requirements of OAR 340-256-0350 and 340-256-0410, the basic test requirements of OAR 340-256-0340, 340-356-0380, 340-256-0400, or other test criteria as determined by the Department.
- (d) A heavy duty vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0390 and 340-256-0420, except gasoline powered heavy duty vehicles equipped with OBDII or higher systems must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test system, or other similar manufacturing problems, the vehicle must meet either the enhanced test requirements of OAR 340-256-0350 and 340-256-0410, the basic test requirements of OAR 340-256-0340, 340-356-0380, 340-256-0400, or other test criteria as determined by the Department.

(2) Except as provided in section (3) of this rule, any person owning or leasing vehicles that are up to 20 model years in age in the Medford-Ashland Air Quality Maintenance Area must ensure the vehicles meet the requirements of one of the following emission tests:

- (a) A light duty vehicle that is a 1996 and newer model year must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test equipment, or other similar manufacturing problems, the vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400 and 340-256-0430 or other test criteria as determined by the Department.
- (b) A light-duty vehicle that is 20 model years in age through 1995 model year must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0390, 340-256-0400 and 340-256-0420.
- (c) A heavy duty vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0390 and 340-256-0420. All gasoline powered heavy duty vehicles equipped with OBDII or higher systems must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an

associated recall), vehicle incompatibility with the OBD test equipment, or other similar manufacturing problems, the vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400 and 340-256-0430 or other test criteria as determined by the Department.

(3) The Department may test any gasoline powered heavy duty or light duty vehicle using one of the following procedures as an alternative to the test procedure otherwise required by this rule:

(a) Clean-Screen Testing following the procedures of OAR 340-256-0357 or

(b) Self-Service Testing following the procedures of OAR 340-256-0358.

(4) Vehicle owners may apply for a waiver from the enhanced test requirements in section (1)(b) of this rule and OAR 340-256-0350. Vehicle owners are eligible in the year 2000 if their net household income is less than or equal to that established by multiplying the year 2000 Federal Poverty Guideline amounts by 1.3. For each year after the year 2000, the calculated year 2000 numbers are adjusted using the Oregon Consumer Price Index for the Portland Metro Regional Area. Proof of eligibility and vehicle ownership may be required by the Department. Providing false information may result in revocation of the low income waiver. If the Department approves the waiver, the owner must pass the basic motor vehicle emissions test requirements in OAR 340-256-0300(1)(a) and 340-256-0340 and pay the required fees in order to receive a certificate of compliance.

*State effective: 10/24/03; EPA effective: 1/21/2005*

### **340-256-0310 Government-Owned Vehicle, Permanent Fleet Vehicle and United States Government Vehicle Testing Requirements**

(1) All motor vehicles registered as government-owned vehicles under ORS 805.040 which are required to be certified pursuant to ORS 815.300 shall, as means of that certification, obtain a Certificate of Compliance.

(a) Government-owned vehicles in a fleet of 50 or more vehicles must be certified annually.

(b) Government-owned vehicles in a fleet of less than 50 vehicles must be certified bi-annually.

(2) All motor vehicles registered as permanent fleet vehicles under ORS 805.120 which are required to be certified pursuant to ORS 803.350 and 815.295 to 815.325 shall, as means of that certification, obtain a Certificate of Compliance.

(3) Any motor vehicle which is to be registered under ORS 805.040 or 805.120, but is not a new motor vehicle, shall obtain a Certificate of Compliance prior to that registration as required by ORS 803.350 and 815.295 to 815.325.

(4) All motor vehicles owned by the United States Government and operated in the Portland Vehicle Inspection Area or the Medford-Ashland Air Quality Maintenance Area (AQMA) shall annually obtain a Certificate of Compliance.

(a) United States Government tactical military vehicles are not required to be certified.

(b) Federal installations located within the Portland Area Vehicle Inspection Program and

the Medford-Ashland AQMA must provide a listing to the Department of all federal employee-owned vehicles operated on the installation and demonstrate that these vehicles have complied with this Division. Inspection results shall be reported to the Department on a quarterly basis and the list is be updated annually.

(5) For the purposes of providing a staggered certification schedule for vehicles registered as government-owned vehicles under ORS 805.040 or permanent fleet vehicles under ORS 805.120, such schedule shall, except as provided by section (6) of this rule, be on the basis of the final numerical digit contained on the vehicle license plate. Such certification shall be completed by the last day of the month as provided below (last digit and month or year, respectively):

- (a) 1 - January;
- (b) 2 - February;
- (c) 3 - March;
- (d) 4 - April;
- (e) 5 - May;
- (f) 6 - June;
- (g) 7 - July;
- (h) 8 - August;
- (i) 9 - September;
- (j) 0 - October;
- (k) Even - even numbered years for vehicles that are tested bi-annually;
- (l) Odd - odd numbered years for vehicles that are tested bi-annually.

(6) In order to accommodate a fleet's scheduled maintenance practices, the Department may establish a specific separate schedule for vehicles registered as government-owned vehicles under ORS 805.040 or permanent fleet vehicles under ORS 805.120 if these vehicles are owned by a Public Agency Fleet or Private Business Fleet licensed under OAR 340-256-0440.

(7) Every agency or organization owning vehicles described in this rule shall annually report, in either electronic or printed form, to the Department the following information:

- (a) The vehicle make;
- (b) The vehicle model;
- (c) The vehicle identification number (VIN);
- (d) The number of Certificates of Compliance issued; and
- (e) The date on which the motor vehicles were issued Certificates of Compliance.

*State effective: 10/14/99; EPA effective: 1/21/2005*

## **340-256-0320**

### **1. Motor Vehicle Inspection Program Fee Schedule**

This rule sets out the fee schedule for Certificates of Compliance and licenses issued by

the Department's Vehicle Inspection Program:

(1) The cost of each Certificate of Compliance issued by the Department, including those issued at emissions test stations and those issued through the Clean-Screen and Self-Service Testing procedures, is:

(a) In the Portland Vehicle Inspection Area a maximum of \$21; or

(b) In the Medford-Ashland Air Quality Maintenance Area a maximum of \$10.

(2) The cost of each Certificate of Compliance issued by a Private Business Fleet or Public Agency Fleet is:

(a) In the Portland Vehicle Inspection Area is a maximum of \$10; and

(b) In the Medford-Ashland Air Quality Maintenance Area is a maximum of \$5.

(3) The cost of each License issued to a Private Business Fleet or Public Agency Fleet is:

(a) Initial \$5;

(b) Annual renewal \$1.

(4) The cost of each License issued to a Private Business Fleet or Public Agency Fleet Vehicle Emission Inspector is:

(a) Initial \$5;

(b) Annual renewal \$1.

(5) The cost of each License issued for a Gas Analytical System is:

(a) Initial \$5;

(b) Annual renewal \$1.

(6) The cost of each Certificate of Compliance issued on-site to an automobile dealership is a maximum of \$26.

*State effective: 10/24/03; EPA effective: 1/21/2005*

### **340-256-0330 Department of Defense Personnel Participating in the Privately Owned Vehicle Import Control Program**

(1) U.S. Department of Defense (DOD) personnel participating in the DOD Privately Owned Vehicle (POV) Import Control Program operating a 1975 or newer model year vehicle, are exempt from the prohibition of ORS 815.305 insofar as it pertains to catalytic converter systems, and, if applicable, exhaust gas oxygen (O<sub>2</sub>) sensor(s), if one of the following conditions is met:

(a) The vehicle will be driven to the port and surrendered for export under the above program within ten working days of disconnection, deactivation, or inoperability of the catalytic converter system or exhaust gas oxygen (O<sub>2</sub>) sensor(s); or

(b) The reconnection, reactivation, or reoperability of the catalytic converter systems and exhaust gas oxygen (O<sub>2</sub>) sensor(s), is made within 10 working days from the time the owner picked up the vehicle at the port.

(2) Persons disconnecting, deactivating or rendering inoperable any catalytic converter system or exhaust gas oxygen (O<sub>2</sub>) sensor(s) on 1975 or newer model year vehicle of DOD personnel participating in the DOD POV Import Control Program which will be

driven to the port and surrendered for exportation under said program within ten working days are exempt from the prohibition of ORS 815.305.

(3) Unless otherwise exempt under this Division, vehicles must be configured as a vehicle certified by the EPA for sale and use within the United States pursuant to **40 CFR, part 86, subpart A**.

(4) Documentation shall be kept with the vehicle at all times while the vehicle is operated in the United States which provides sufficient information to demonstrate compliance with all appropriate qualifications and conditions of this exemption, including the following:

(a) The unique vehicle identification number (VIN) of the subject vehicle;

(b) The agency or organization which employs the owner of the subject vehicle;

(c) The country to which the owner of the subject vehicle is being transferred;

(d) The date(s) when applicable alterations were performed on the subject vehicle;

(e) The date when the subject vehicle is scheduled to be delivered to the appropriate port for shipment out of the United States; and

(f) The date when the subject vehicle is picked up from the port of importation upon returning to the United States.

*State effective: 10/14/99; EPA effective: 1/21/2005*

### **340-256-0340 Light Duty Motor Vehicle and Heavy Duty Gasoline Motor Vehicle Emission Control Test Method for Basic Program**

(1) General Requirements:

(a) Vehicles having coolant, oil or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted shall be rejected from the testing area. The Inspector is prohibited from conducting the emissions test until the defects are corrected.

(b) The vehicle transmission is to be placed in neutral gear if equipped with a manual transmission, or in park position if equipped with an automatic transmission. The hand or parking brake is to be engaged. If the brake is found to be defective, then wheel chocks are to be placed in front and/or behind the vehicle's tires.

(c) All accessories are to be turned off.

(d) The Inspector must insure that the motor vehicle is equipped with the required functioning motor vehicle pollution control system in accordance with the criteria of OAR 340-256-0380 or OAR 340-256-0390. For vehicles not meeting this criteria upon completion of the testing process, the Inspector shall issue a report to the driver stating all reasons for noncompliance.

(e) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations will begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations will be analyzed at a rate of two times per second. The measured value for pass/fail

determinations will be a simple running average of the measurements taken over five seconds.

(f) Pass/fail determinations. A pass or fail determination will be made for each applicable test mode based on a comparison of the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420 and the measured value for HC and CO and described in subsection (1)(a) of this rule. A vehicle will pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable standards. A vehicle will fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(g) Void test conditions. The test will immediately end and any exhaust gas measurements will be voided if the measured concentration of CO plus CO<sub>2</sub> falls below the applicable standards listed in OAR 340-256-0380 and OAR 340-256-0390 or the vehicle's engine stalls at any time during the test sequence.

(h) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes will be sampled simultaneously.

(i) The test will be immediately terminated upon reaching the overall maximum test time.

(2) Test sequence.

(a) The test sequence will consist of a first-chance test and a second chance test as follows:

(A) The first-chance test, as described in section (3) of this rule, will consist of an idle mode followed by a high-speed mode.

(B) The second-chance high-speed mode, as described in section (3) of this rule, will immediately follow the first-chance high-speed mode. It will be performed only if the vehicle fails the first-chance test. The second-chance idle mode, as described in section (4) of this rule, will follow the second chance high speed mode and be performed only if the vehicle fails the idle mode of the first-chance test.

(b) The test sequence will begin only after the following requirements are met:

(A) The vehicle will be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine will be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(B) The tachometer will be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(C) The sample probe will be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a

tailpipe extension will be used.

(D) The measured concentration of CO plus CO<sub>2</sub> will be greater than or equal to the applicable standards listed in OAR 340-256-0380 and OAR 340-256-0390.

(3) First-chance test and second-chance high-speed mode. The test timer will start (tt=0) when the conditions specified in section (2)(b) of this rule are met. The first-chance test and second-chance high-speed mode will have an overall maximum test time of 390 seconds (tt=390). The first-chance test will consist of an idle mode following immediately by a high-speed mode. This is followed immediately by an additional second-chance high-speed mode, if necessary.

(a) First-chance idle mode.

(A) Except for diesel vehicles, the mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If engine speed exceeds 1300 rpm or falls below 550 rpm, the mode timer will reset to zero and resume timing. The minimum idle mode length will be determined as described in section (3)(a)(B) of this rule. The maximum idle mode length will be 30 seconds (mt=30) elapsed time.

(B) The pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the mode terminated as follows:

(i) The vehicle will pass the idle mode and the mode will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(ii) The vehicle will fail the idle mode and the mode will be terminated if the provisions of section (3)(a)(B)(i) of this rule is not satisfied within an elapsed time of 30 seconds (mt=30).

(iii) The vehicle may fail the first-chance and second-chance test will be omitted if no exhaust gas concentration less than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(b) First-chance and second-chance high-speed modes. This mode includes both the first-chance and second-chance high-speed modes, and follows immediately upon termination of the first-chance idle mode.

(A) Except for diesel vehicles, the mode timer will reset (mt=0) when the vehicle engine speed is between 2200 and 2800 rpm. If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion, or more than six seconds over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value will be invalidated and the mode continued. If any excursion lasts for more than ten seconds, the mode timer will reset to zero (mt=0) and timing resumed. The minimum high-speed mode length will be determined as described under paragraphs (3)(b)(B) and (C) of this rule. The maximum high-speed mode length will be 180 seconds (mt=180) elapsed time.

(B) Ford Motor Company and Honda vehicles. For 1981-1987 model year Ford Motor Company vehicles and 1984-1985 model year Honda Preludes, the pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(i) A pass or fail determination, as described below, will be used, for vehicles that passed the idle mode, to determine whether the high-speed test should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180).

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(II) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values are greater than the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420, the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds have elapsed (mt=40).

(III) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at any point between an elapsed time of 40 seconds (mt=40) and 60 seconds (mt=60), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 or OAR 340-256-0420.

(V) The vehicle will fail the high-speed mode and the test will be terminated if neither of sections (3)(b)(B)(i)(I), (III) or (IV) of this rule is not satisfied by an elapsed time of 180 seconds (mt=180).

(ii) A pass or fail determination will be made for vehicles that failed the idle mode and the high-speed mode terminated at the end of an elapsed time of 180 seconds (mt=180) as follows:

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds (mt=30) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(II) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values of HC and CO exhaust gas concentrations during the high-speed mode are greater than

the applicable short test standards as described in subsection (1)(b) of this rule, the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds (mt=40) have elapsed.

(III) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 60 seconds (mt=60) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 or OAR 340-256-0420.

(V) The vehicle will fail the high-speed mode and the test will be terminated if neither of sections (3)(b)(B)(ii)(I), (III) or (IV) of this rule is satisfied by an elapsed time of 180 seconds (mt=180).

(C) All other light-duty vehicles. The pass/fail analysis for vehicles not specified in section (3)(b)(B) of this rule will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(i) A pass or fail determination will be used for 1981 and newer model year vehicles that passed the idle mode, to determine whether the high-speed mode should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, no high speed idle mode test will be performed.

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(III) The vehicle will fail the high-speed mode and the test will be terminated if neither the provisions of section (3)(b)(C)(i)(I) or (II) of this rule is satisfied.

(ii) A pass or fail determination will be made for 1981 and newer model year vehicles that failed the idle mode and the high-speed mode terminated prior to or at the

end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, the duration of the high speed idle mode will be 30 seconds and no pass or fail determination will be used at the high speed idle mode.

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds (mt=30) if any measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(III) The vehicle will fail the high speed mode and test will be terminated if neither the provisions of section (3)(b)(C)(ii)(I) or (II) is satisfied.

(4) Second-chance idle mode. If the vehicle fails the first-chance idle mode and passes the high-speed mode, the mode timer will reset to zero (mt=0) and a second chance idle mode will commence. The second-chance idle mode will have an overall maximum mode time of 30 seconds (mt=30). The test will consist on an idle mode only.

(a) The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes will be shut off for not more than 10 seconds and restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(b) Except for diesel vehicles, the mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If the engine speed exceeds 1300 rpm or falls below 550 rpm the mode timer will reset to zero and resume timing. The minimum second-chance idle mode length will be determined as described in section (4)(c) of this rule. The maximum second-chance idle mode length will be 30 seconds (mt=30) elapsed time.

(c) The pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the second-chance mode will be terminated as follows:

(A) The vehicle will pass the second-chance idle mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), any measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle will pass the second-chance idle mode and the test will be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (4)(c)(A) of this rule are not satisfied and the measured values during the time period between 25 and 30 seconds (mt=25-30) are less than or equal to the applicable short test standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(C) The vehicle will fail the second-chance idle mode and the test will be terminated if neither of the provisions of sections (4)(c)(A) or (B) of this rule are satisfied by an elapsed time of 30 seconds (mt=30).

(5) If the vehicle is capable of being operated with both gasoline and gaseous fuels, then the steps in section (2) of this rule are to be followed so that emission test results are obtained from both fuels.

(6) The Inspector must remove the fuel cap from the vehicle and test it to insure the cap is capable of properly sealing the fuel tank's fumes. The Inspector must insert the cap onto a container with fittings representing that of the vehicle's fuel filler pipe. The container will be pressurized with inert gas to detect any leaks. The gas cap leak test standard will be equivalent to the United States Environmental Protection Agency (EPA) leak down standard; however, the time for leak down or the leak detection method may vary from the EPA specified time and method. The provisions of this section will apply only within the Portland Vehicle Inspection Area.

(7) If it is judged that the vehicle may be emitting propulsion exhaust noise in excess of the noise standards of OAR 340-256-0430, adopted pursuant to ORS 467.030, then a noise measurement is to be conducted and recorded while the engine is at the speed specified in section (3)(b)(A) of this rule. A reading from each exhaust outlet shall be recorded at the raised engine speed. This provision for noise inspection shall apply only within the Portland Vehicle Inspection Area.

(8) If it is determined that the vehicle complies with OAR 340-256-0380 through 340-256-0430, and ORS 467.030, 468A.350 through 468A.400, 803.350 and 815.295 through 815.325, then, following receipt of the required fees, the Private Business Fleet Vehicle Emission Inspector, Public Agency Fleet Vehicle Emission Inspector or Vehicle Emission Inspector shall issue the required Certificate of Compliance.

*State effective: 10/14/99; EPA effective: 1/21/2005*

### **340-256-0340 Light Duty Motor Vehicle and Heavy Duty Gasoline Motor Vehicle Emission Control Test Method for Basic Program**

(1) General Requirements:

(a) Vehicles having coolant, oil or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted shall be rejected from the testing area. The Inspector is prohibited from conducting the emissions test until the defects are corrected.

(b) The vehicle transmission is to be placed in neutral gear if equipped with a manual transmission, or in park position if equipped with an automatic transmission. The hand or parking brake is to be engaged. If the brake is found to be defective, then wheel chocks are to be placed in front and/or behind the vehicle's tires.

(c) All accessories are to be turned off.

(d) The Inspector must insure that the motor vehicle is equipped with the required

functioning motor vehicle pollution control system in accordance with the criteria of OAR 340-256-0380 or OAR 340-256-0390. For vehicles not meeting this criteria upon completion of the testing process, the Inspector shall issue a report to the driver stating all reasons for noncompliance.

(e) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations will begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations will be analyzed at a rate of two times per second. The measured value for pass/fail determinations will be a simple running average of the measurements taken over five seconds.

(f) Pass/fail determinations. A pass or fail determination will be made for each applicable test mode based on a comparison of the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420 and the measured value for HC and CO and described in subsection (1)(a) of this rule. A vehicle will pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable standards. A vehicle will fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(g) Void test conditions. The test will immediately end and any exhaust gas measurements will be voided if the measured concentration of CO plus CO<sub>2</sub> falls below the applicable standards listed in OAR 340-256-0380 and OAR 340-256-0390 or the vehicle's engine stalls at any time during the test sequence.

(h) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes will be sampled simultaneously.

(i) The test will be immediately terminated upon reaching the overall maximum test time.

(2) Test sequence.

(a) The test sequence will consist of a first-chance test and a second chance test as follows:

(A) The first-chance test, as described in section (3) of this rule, will consist of an idle mode followed by a high-speed mode.

(B) The second-chance high-speed mode, as described in section (3) of this rule, will immediately follow the first-chance high-speed mode. It will be performed only if the vehicle fails the first-chance test. The second-chance idle mode, as described in section (4) of this rule, will follow the second chance high speed mode and be performed only if the vehicle fails the idle mode of the first-chance test.

(b) The test sequence will begin only after the following requirements are met:

(A) The vehicle will be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine will be at normal operating

temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(B) The tachometer will be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(C) The sample probe will be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension will be used.

(D) The measured concentration of CO plus CO<sub>2</sub> will be greater than or equal to the applicable standards listed in OAR 340-256-0380 and OAR 340-256-0390.

(3) First-chance test and second-chance high-speed mode. The test timer will start (tt=0) when the conditions specified in section (2)(b) of this rule are met. The first-chance test and second-chance high-speed mode will have an overall maximum test time of 390 seconds (tt=390). The first-chance test will consist of an idle mode following immediately by a high-speed mode. This is followed immediately by an additional second-chance high-speed mode, if necessary.

(a) First-chance idle mode.

(A) Except for diesel vehicles, the mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If engine speed exceeds 1300 rpm or falls below 550 rpm, the mode timer will reset to zero and resume timing. The minimum idle mode length will be determined as described in section (3)(a)(B) of this rule. The maximum idle mode length will be 30 seconds (mt=30) elapsed time.

(B) The pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the mode terminated as follows:

(i) The vehicle will pass the idle mode and the mode will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(ii) The vehicle will fail the idle mode and the mode will be terminated if the provisions of section (3)(a)(B)(i) of this rule is not satisfied within an elapsed time of 30 seconds (mt=30).

(iii) The vehicle may fail the first-chance and second-chance test will be omitted if no exhaust gas concentration less than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(b) First-chance and second-chance high-speed modes. This mode includes both the first-chance and second-chance high-speed modes, and follows immediately upon termination of the first-chance idle mode.

(A) Except for diesel vehicles, the mode timer will reset (mt=0) when the vehicle

engine speed is between 2200 and 2800 rpm. If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion, or more than six seconds over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value will be invalidated and the mode continued. If any excursion lasts for more than ten seconds, the mode timer will reset to zero (mt=0) and timing resumed. The minimum high-speed mode length will be determined as described under paragraphs (3)(b)(B) and (C) of this rule. The maximum high-speed mode length will be 180 seconds (mt=180) elapsed time.

(B) Ford Motor Company and Honda vehicles. For 1981-1987 model year Ford Motor Company vehicles and 1984-1985 model year Honda Preludes, the pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(i) A pass or fail determination, as described below, will be used, for vehicles that passed the idle mode, to determine whether the high-speed test should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180).

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(II) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values are greater than the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420, the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds have elapsed (mt=40).

(III) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at any point between an elapsed time of 40 seconds (mt=40) and 60 seconds (mt=60), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 or OAR 340-256-0420.

(V) The vehicle will fail the high-speed mode and the test will be terminated if neither of sections (3)(b)(B)(i)(I), (III) or (IV) of this rule is not satisfied by an elapsed time of 180 seconds (mt=180).

(ii) A pass or fail determination will be made for vehicles that failed the idle mode and the high-speed mode terminated at the end of an elapsed time of 180 seconds

(mt=180) as follows:

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds (mt=30) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(II) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values of HC and CO exhaust gas concentrations during the high-speed mode are greater than the applicable short test standards as described in subsection (1)(b) of this rule, the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds (mt=40) have elapsed.

(III) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 60 seconds (mt=60) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 or OAR 340-256-0420.

(V) The vehicle will fail the high-speed mode and the test will be terminated if neither of sections (3)(b)(B)(ii)(I), (III) or (IV) of this rule is satisfied by an elapsed time of 180 seconds (mt=180).

(C) All other light-duty vehicles. The pass/fail analysis for vehicles not specified in section (3)(b)(B) of this rule will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(i) A pass or fail determination will be used for 1981 and newer model year vehicles that passed the idle mode, to determine whether the high-speed mode should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, no high speed idle mode test will be performed.

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable

standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(III) The vehicle will fail the high-speed mode and the test will be terminated if neither the provisions of section (3)(b)(C)(i)(I) or (II) of this rule is satisfied.

(ii) A pass or fail determination will be made for 1981 and newer model year vehicles that failed the idle mode and the high-speed mode terminated prior to or at the end of an elapsed time of 180 seconds ( $mt=180$ ). For pre-1981 model year vehicles, the duration of the high speed idle mode will be 30 seconds and no pass or fail determination will be used at the high speed idle mode.

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds ( $mt=30$ ) if any measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30 seconds ( $mt=30$ ) and if, at any point between an elapsed time of 30 seconds ( $mt=30$ ) and 180 seconds ( $mt=180$ ), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(III) The vehicle will fail the high speed mode and test will be terminated if neither the provisions of section (3)(b)(C)(ii)(I) or (II) is satisfied.

(4) Second-chance idle mode. If the vehicle fails the first-chance idle mode and passes the high-speed mode, the mode timer will reset to zero ( $mt=0$ ) and a second chance idle mode will commence. The second-chance idle mode will have an overall maximum mode time of 30 seconds ( $mt=30$ ). The test will consist on an idle mode only.

(a) The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes will be shut off for not more than 10 seconds and restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(b) Except for diesel vehicles, the mode timer will start ( $mt=0$ ) when the vehicle engine speed is between 550 and 1300 rpm. If the engine speed exceeds 1300 rpm or falls below 550 rpm the mode timer will reset to zero and resume timing. The minimum second-chance idle mode length will be determined as described in section (4)(c) of this rule. The maximum second-chance idle mode length will be 30 seconds ( $mt=30$ ) elapsed time.

(c) The pass/fail analysis will begin after an elapsed time of 10 seconds ( $mt=10$ ). A pass or fail determination will be made for the vehicle and the second-chance mode will be terminated as follows:

(A) The vehicle will pass the second-chance idle mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds ( $mt=30$ ), any measured

values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle will pass the second-chance idle mode and the test will be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (4)(c)(A) of this rule are not satisfied and the measured values during the time period between 25 and 30 seconds (mt=25-30) are less than or equal to the applicable short test standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(C) The vehicle will fail the second-chance idle mode and the test will be terminated if neither of the provisions of sections (4)(c)(A) or (B) of this rule are satisfied by an elapsed time of 30 seconds (mt=30).

(5) If the vehicle is capable of being operated with both gasoline and gaseous fuels, then the steps in section (2) of this rule are to be followed so that emission test results are obtained from both fuels.

(6) The Inspector must remove the fuel cap from the vehicle and test it to insure the cap is capable of properly sealing the fuel tank's fumes. The Inspector must insert the cap onto a container with fittings representing that of the vehicle's fuel filler pipe. The container will be pressurized with inert gas to detect any leaks. The gas cap leak test standard will be equivalent to the United States Environmental Protection Agency (EPA) leak down standard; however, the time for leak down or the leak detection method may vary from the EPA specified time and method. The provisions of this section will apply only within the Portland Vehicle Inspection Area.

(7) If it is judged that the vehicle may be emitting propulsion exhaust noise in excess of the noise standards of OAR 340-256-0430, adopted pursuant to ORS 467.030, then a noise measurement is to be conducted and recorded while the engine is at the speed specified in section (3)(b)(A) of this rule. A reading from each exhaust outlet shall be recorded at the raised engine speed. This provision for noise inspection shall apply only within the Portland Vehicle Inspection Area.

(8) If it is determined that the vehicle complies with OAR 340-256-0380 through 340-256-0430, and ORS 467.030, 468A.350 through 468A.400, 803.350 and 815.295 through 815.325, then, following receipt of the required fees, the Private Business Fleet Vehicle Emission Inspector, Public Agency Fleet Vehicle Emission Inspector or Vehicle Emission Inspector shall issue the required Certificate of Compliance.

*State effective: 10/14/99; EPA effective: 1/21/2005*

### **340-256-0350**

## **2. Light Duty Motor Vehicle Emission Control Test Method for Enhanced Program**

(1) General Requirements.

(a) Data Collection. The following information shall be determined for the vehicle being tested and used to automatically select the dynamometer inertia and power absorption settings:

(A) Vehicle type: LDPC, LDT1 or LDT2;

(B) Chassis model year;

(C) Make;

(D) Model;

(E) Gross vehicle weight rating; and

(F) Number of cylinders, or cubic inch displacement of the engine.

(b) Ambient Conditions. The ambient temperature, absolute humidity, and barometric pressure shall be recorded continuously during the transient driving cycle or as a single set of readings up to 4 minutes before the start of the transient driving cycle.

(c) Restart. If shut off, the vehicle shall be restarted as soon as possible before the test and shall be running at least 30 seconds prior to the transient driving cycle.

(2) Pre-inspection and Preparation.

(a) Accessories. The Inspector must insure that all accessories (air conditioning, heat, defogger, radio, automatic traction control if switchable, etc.) will be turned off.

(b) Leaks. The vehicle shall be inspected for exhaust leaks. Vehicles with leaking exhaust systems shall be rejected from testing. Vehicles having coolant, oil or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted shall be rejected from the testing area. The Inspector is prohibited from conducting the emission test until the defects are corrected.

(c) Operating Temperature. Vehicles in overheated condition shall be rejected from testing.

(d) Tire Condition. Vehicles will be rejected from testing if the tire cords, or bubbles, cuts, or other damage are visible. Vehicles will be rejected that have space-saver spare tires on the drive axle. Vehicles may be rejected that do not have reasonably sized tires. Vehicle tires will be visually checked for adequate pressure level. Drive wheel tires that appear low will be inflated to approximately 30 psi, or to tire sidewall pressure, or manufacturers recommendations.

(e) Ambient Background. Background concentrations of hydrocarbons, carbon monoxide, oxides of nitrogen, and carbon dioxide (HC, CO, NO<sub>x</sub>, and CO<sub>2</sub>, respectively) will be sampled to determine background concentration of constant volume sampler dilution air. The sample will be taken for a minimum of 15 seconds within 120 seconds of the start of the transient driving cycle, using the same analyzers used to measure tailpipe emissions. Average readings over the 15 seconds for each gas will be recorded in the test record. Testing will be prevented until the average ambient background levels are less than 20 ppm HC, 35 ppm CO, and 2 ppm NO<sub>x</sub>.

(f) Sample System Purge. While a lane is in operation, the CVS will continuously purge the CVS hose between tests, and the sample system will be continuously purged when

not taking measurements.

(g) Negative Values. Negative gram per second readings will be integrated as zero and recorded as such.

### (3) Equipment Positioning and Setting.

(a) Roll Rotation. The vehicle will be maneuvered onto the dynamometer with the drive wheels positioned on the dynamometer rolls. Prior to test initiation, the rolls will be rotated until the vehicle laterally stabilizes on the dynamometer. Drive wheel tires will be dried if necessary to prevent slippage during the initial acceleration.

(b) Purge Equipment. After the vehicle is positioned on the dynamometer, the vehicle gas cap is removed. A replacement cap with a ported hole through the cap is installed on the vehicle and the tubing to duct Helium to vehicle is connected to the port on the replacement cap. Helium flow into the cap is computer controlled to match the timing of the transient driving cycle. The evaporative canister purge will be measured during the transient driving cycle by inputting Helium under pressure into the test vehicle's fuel tank. Helium is measured in the vehicle exhaust with a detection device and accumulated volume of Helium is compared with the standard of 0.45 liters of Helium to determine pass/fail.

(c) Cooling System. Testing will not begin until the test-cell cooling system is positioned and activated. The cooling system will be positioned to direct air to the vehicle cooling system, but will not be directed at the catalytic converter.

(d) Vehicle Restraint. Testing will not begin until the vehicle is restrained. In addition, the parking brake will be set for front wheel drive vehicles prior to the start of the test.

(e) Dynamometer Settings. Dynamometer power absorption and inertia weight settings will be automatically chosen from an EPA supplied electronic look-up table that will be referenced based upon the vehicle identification information obtained in section (1)(a) of this rule. Vehicles not listed will be tested using default power absorption and inertia settings as follows: [Table not included. See ED. NOTE.]

(f) Exhaust Collection System. The exhaust collection system will be positioned to insure complete capture of the entire exhaust stream from the tailpipe during the transient driving cycle.

### (4) Vehicle Emission Test Sequence.

(a) Transient Driving Cycle. The Oregon enhanced test cycle consists of a single 31 second symmetrical peak with a maximum speed of 30.1 miles per hour (MPH). If the vehicle exceeds the emission standards established in OAR 340-256-0410, additional cycles up to a maximum of four (4) will be driven. If the vehicle passes the standards during any of the four cycles, the test will be terminated. After receipt of the required fees, the Inspector will issue the required Certificate of Compliance. If after four cycles the vehicle still has not passed the test, an algorithm is used to extrapolate the emission readings through a sixth testing cycle. If the algorithm shows the vehicle meets the standards in the hypothetical sixth cycle, the vehicle will pass the enhanced emissions

test. The extrapolation algorithm consists of extrapolating the emissions readings linearly from the first four cycles to the hypothetical sixth cycle using least squares regression line. The vehicle will be driven over the following cycle: [Table not included. See ED. NOTE.]

(b) Driving Trace. The Inspector will follow an electronic, visual depiction of the time/speed relationship of the transient driving cycle (hereinafter, the trace). The visual depiction of the trace will be of sufficient magnification and adequate detail to allow accurate tracking by the Inspector and will permit the Inspector to anticipate upcoming speed changes. The trace will also clearly indicate gear shifts as specified in section (4)(c) of this rule.

(c) Shift Schedule. For vehicles with manual transmissions, Inspectors will shift gears according to the following shift schedule: [Table not included. See ED. NOTE.] Gear shifts will occur at the points in the driving cycle where the specified speeds are obtained.

(d) Speed Excursion Limits. Speed excursion limits will apply as follows:

(A) The upper limit is 2 mph higher than the highest point on the trace within 1 second of the given time.

(B) The lower limit is 2 mph lower than the lowest point on the trace within 1 second of the given time.

(C) Speed variations greater than the tolerances (such as may occur during gear changes) are acceptable provided they occur for no more than 2 seconds on any occasion.

(D) Speeds lower than those prescribed during accelerations are acceptable provided the vehicle is operated at maximum available power during such accelerations until the vehicle speed is within the excursion limits.

(E) Exceedances of the limits in (A) through (C) of this section will automatically result in a void test. The station manager can override the automatic void of a test if the manager determines that the conditions specified in section (4)(d)(D) of this rule occurred. Tests will be aborted if the upper excursion limits are exceeded. Tests may be aborted if the lower limits are exceeded.

(e) Speed Variation Limits.

(A) A linear regression of feedback value on reference value will be performed on each transient driving cycle for each speed using the method of least squares, with the best fit equation having the form:  $y = mx + b$ , where:

(i)  $y$  = The feedback (actual) value of speed;

(ii)  $m$  = The slope of the regression line;

(iii)  $x$  = The reference value; and

(iv)  $b$  = The y-intercept of the regression line.

(B) The standard error of estimate (SE) of y on x will be calculated for each regression line. A transient driving cycle lasting the full 31 seconds that exceeds the following criteria will be void and the test will be repeated:

(i) SE = 2.0 mph maximum.

(ii) m = 0.96–1.01.

(iii)  $r^2 = 0.97$  minimum.

(iv) b =  $\pm 2.0$  mph.

(f) Distance Criteria. The actual distance traveled for the transient driving cycle and the equivalent vehicle speed (i.e., roll speed) will be measured. If the absolute difference between the measured distance and the theoretical distance for the actual test exceeds 0.05 miles, the test will be void.

(g) Vehicle Stalls. Vehicle stalls during the test will result in a void and a new test. Three (3) stalls will result in test failure or rejection from testing.

(h) Dynamometer Controller Check. For each test, the measured horsepower, and inertia if electric simulation is used, will be integrated from 55 seconds to 81 seconds (divided by 26 seconds), and compared with the theoretical road-load horsepower (for the vehicle selected) integrated over the same portion of the cycle. The same procedure will be used to integrate the horsepower between 189 seconds to 201 seconds (divided by 12 seconds). The theoretical horsepower will be calculated based on the observed speed during the integration interval. If the absolute difference between the theoretical horsepower and the measured horsepower exceeds 0.5 hp, the test will be void. Alternate error checking methods may be used if shown to be equivalent.

(i) Inertia Weight Selection. Operation of the inertia weight selected for the vehicle will be verified as specified in OAR 340-256-0460. For systems employing electrical inertia simulation, an algorithm identifying the actual inertia force applied during the transient driving cycle will be used to determine proper inertia simulation. For all dynamometers, if the observed inertia is more than 1% different from the required inertia, the test will be void.

(j) Constant Volume Sampling (CVS) Operation. The CVS operation will be verified for each test for a Critical Flow Venturi (CFV) type CVS by measuring either the absolute pressure difference across the venturi or measuring the blower vacuum behind the venturi for minimum levels needed to maintain choke flow for the venturi design. The operation of an Subsonic Venturi (SSV) type CVS will be verified throughout the test by monitoring the difference in pressure between upstream and throat pressure. The minimum values will be determined from system calibrations. Monitored pressure differences below the minimum values will void the test.

(k) Fuel Economy. For each test, the health of the overall analysis system will be evaluated by checking a test vehicle's fuel economy for reasonableness, relative to upper and lower limits, representing the range of fuel economy values normally encountered for the test inertia and horsepower selected. For each inertia selection, the upper fuel

economy limit will be determined using the lowest horsepower setting typically selected for the inertia weight, along with statistical data, test experience, and engineering judgment. A similar process for the lower fuel economy limit will be used with the highest horsepower setting typically selected for the inertia weight. For test inertia selections where the range of horsepower settings is greater than 5 horsepower, at least two sets of upper and lower fuel economy limits will be determined and appropriately used for the selected test inertia. Tests with fuel economy results in excess of 1.5 times the upper limit will result in a void test.

(5) Emission Measurements.

(a) Exhaust Measurement. The emission analysis system will sample and record dilute exhaust HC, CO, CO<sub>2</sub>, and NO<sub>x</sub> during the transient driving cycle.

(b) Purge Measurement. The analysis system will sample and record the purge flow by measuring Helium concentration observed in the vehicle exhaust sample. The total volume of Helium flow will be calculated over the course of the actual driving cycle.

(c) Pressure Measurement. The Department may include the fuel system vapor leak test as an element of the evaporative control system test if it is necessary to maintain the ozone standard as specified in OAR 340-202-0090.

(d) Fuel Cap test. The Inspector must remove the fuel cap from the vehicle and test it to insure the cap is capable of properly sealing the fuel tank's fumes. The Inspector must insert the cap onto a container with fittings representing that of the vehicle's fuel filler pipe. The container will be pressurized with inert gas to detect any leaks. The gas cap leak test standard will be equivalent to the United States Environmental Protection Agency (EPA) leak down standard; however, the time for leak down or the leak detection method may vary from the EPA specified time and method.

(6) If it is determined that the vehicle complies with OAR 340-256-0400 and ORS 815.310 through 815.325, then, following receipt of the required fees, the Private Business Fleet Vehicle Emission Inspector, Public Agency Fleet Vehicle Emission Inspector or Vehicle Emission Inspector shall issue the required Certificate of Compliance.

*State effective: 10/14/99; EPA effective: 1/21/2005*

### **340-256-0355**

#### **3. Emissions Control Test Method for OBD Test Program**

The OBD test must be performed in accordance with the Vehicle Inspection Program Inspection and Maintenance Policies and Procedure Number 225.00, which includes downloading computerized vehicle OBD information, observing trouble codes, and observing the malfunction indicator lights located on vehicle dashboards.

*State effective: 10/14/99; EPA effective: 1/21/2005*

### **340-256-0356 Emissions Control Test Method for On-Site Vehicle Testing for**

## **Automobile Dealerships**

The on-site vehicle test will be performed in accordance with the Vehicle Inspection Program Inspection and Maintenance Policies and Procedure Number 226.00. The test will be performed by DEQ using DEQ testing equipment and conducted at the dealership location. The test program applies to manufacturer franchise automobile dealerships only, as defined in ORS 650.120(1). Dealerships may use either on-site testing or the centralized DEQ test stations.

*State effective: 10/14/99; EPA effective: 1/21/2005*

### **340-256-0370**

#### **4. Renewal of Registration for Light Duty Motor Vehicles and Heavy Duty Gasoline Motor Vehicles Temporarily Operating Outside of Oregon**

Vehicles registered in the boundaries described in OAR 340-204-0080 that are being operated in another state and are at an address located at least 150 miles outside the Oregon border shall comply with the following requirements.

(1) For vehicles operated within another Environmental Protection Agency approved Inspection and Maintenance (I/M) program area, the Department of Environmental Quality shall establish reciprocity provisions to ensure motor vehicle compliance with the other state's I/M requirements. Compliance with the other state's I/M program requirements is equivalent to the issuance of a Certificate of Compliance.

(2) For vehicles operated in another state, but not within another Environmental Protection Agency approved Inspection and Maintenance (I/M) area, the Department of Environmental Quality shall issue a temporary exemption from I/M testing requirements until such time as the vehicle returns to Oregon. Within 30 calendar days of the date the vehicle returns to Oregon it shall be required to comply with the Oregon I/M program's test criteria, methods and standards.

*State effective: 10/14/99; EPA effective: 1/21/2005*

### **340-256-0380 Light Duty Motor Vehicle Emission Control Test Criteria for Basic Program**

(1) No vehicle emission control test is valid if the vehicle exhaust system leaks in such a manner as to dilute the exhaust gas being sampled by the gas analytical system. For the purpose of the emission control tests conducted at state facilities, except for diesel vehicles, tests are invalid if the exhaust gas is diluted to such an extent that the sum of the carbon monoxide and carbon dioxide concentrations recorded for the idle speed reading from an exhaust outlet is six percent or less, and on 1975 and newer vehicles with air injection systems seven percent or less.

(2) No vehicle emission control test is valid if the engine idle speed exceeds the manufacturer's idle speed specifications by over 200 RPM.

(3)(a) No vehicle emission control test for a 1975 or newer model vehicle is valid if any element of the following factory-installed motor vehicle pollution control systems have been disconnected, plugged, or otherwise made inoperative in violation of ORS 815.305

(1), except that for 1975 through 1980 model year vehicles the inspection shall be limited to the catalytic converter system and gas cap component of the evaporative control system except as noted in ORS 815.305(2) or as provided for by **40 CFR 85.1701-1709 (published July 1, 1991)**. The gas cap component of the evaporative control system will not be checked in the Medford-Ashland Air Quality Maintenance Area. Motor vehicle pollution control systems include, but are not necessarily limited to:

- (A) Positive crankcase ventilation (PCV) system;
- (B) Exhaust modifier system, including:
  - (i) Air injection reactor system;
  - (ii) Thermal reactor system; and
  - (iii) Catalytic converter system.
- (C) Exhaust gas recirculation (EGR) systems;
- (D) Evaporative control system including the gas cap;
- (E) Spark timing system, including:
  - (i) Vacuum advance system; and
  - (ii) Vacuum retard system.
- (F) Special emission control devices, including:
  - (i) Orifice spark advance control (OSAC);
  - (ii) Speed control switch (SCS);
  - (iii) Thermostatic air cleaner (TAC);
  - (iv) Transmission controlled spark (TCS);
  - (v) Throttle solenoid control (TSC);
  - (vi) Fuel filler inlet restrictor;
  - (vii) Oxygen sensor;
  - (viii) Emission control computer.

(G) Maintenance indicators or on-board diagnostic indicators on 1996 or newer model year vehicles.

(b) The Department may provide alternative criteria for those required under subsection (a) of this section when it can be determined that the component or an acceptable alternative is unavailable. Such alternative criteria may be granted on the basis of the nonavailability of the original part, replacement part, or comparable alternative solution.

(4) No vehicle emission control test for a 1981 or newer model year vehicle is valid if any element of the factory installed motor vehicle pollution control system has been modified or altered in such a manner so as to decrease its efficiency or effectiveness in the control of air pollution in violation of ORS 815.305(1), except as noted in ORS 815.305(2). For the purposes of this section, the following apply:

(a) The use of a nonoriginal equipment aftermarket part (including a rebuilt part) as a replacement part is not considered to be a violation of ORS 815.305, if a reasonable basis exists for knowing that such use will not adversely effect emission control efficiency.

The Department will maintain a listing of those parts that have been determined to adversely effect emission control efficiency;

(b) The use of a nonoriginal equipment aftermarket part or system as a add-on, auxiliary, augmenting, or secondary part of system, is not considered to be a violation of ORS 815.305, if such part or system is on the exemption list of "**Modifications to Motor Vehicle Emission Control Systems Exempted Under California Vehicle Code Section 27156**" granted by the Air Resources Board, or is on the list maintained by the U.S. Environmental Protection Agency of "**Certified to EPA Standards**," or has been determined after review of testing data by the Department that there is no decrease in the efficiency or effectiveness in the control of air pollution;

(c) Adjustments or alterations of particular part or system parameter, if done for purposes of maintenance or repair according to the vehicle or engine manufacturer's instructions, are not considered violations of ORS 815.305.

(5) A 1981 or newer model vehicle that has been converted to operate on gaseous fuels is not in violation of ORS 815.305 when elements of the factory-installed motor vehicle air pollution control system are disconnected for the purpose of conversion to gaseous fuel as authorized by ORS 815.305.

(6) For a 1975 through 1980 model year vehicle in which the original engine has been replaced, if either the vehicle body/chassis original engine, as per registration/title or replacement engine as manufactured had a catalytic converter system, it must be present, intact and operational before a Certificate of Compliance may be issued.

(7) For a 1981 or newer model year vehicle in which the original engine has been replaced, the emission test standards and applicable emissions control equipment for the year, make and model of the vehicle body/chassis, as per registration/title, or replacement engine, whichever is newer, apply. For those diesel powered vehicles that have been converted to operate on gasoline or gasoline equivalent fuel(s), the emission test standards and applicable emission control equipment for the year, make and model of the gasoline equivalent powered engine as originally manufactured, for the vehicle body/chassis, per the registration or replacement engine, whichever is newer, shall apply.

(8) For those vehicles registered/titled as a 1981 or newer model year that were assembled by other than a licensed motor vehicle manufacturer, such as an Assembled, Reconstructed or Replica Vehicle, Department personnel must determine the applicable emission test standards based upon the vintage of the vehicle engine. The year of the engine is presumed to be that stated by the vehicle owner unless Department personnel determine, after physical inspection, that the year of the engine is other than stated by the owner.

(9) An imported nonconforming motor vehicle that has been imported under a certificate of conformity or modification/test procedure pursuant to **40 CFR Part 85, Subpart P**, must comply with the emission control equipment requirements of such certificate or procedure.

*State effective: 10/14/99; EPA effective: 1/21/2005*

### **340-256-0390 Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria**

(1) No vehicle emission control test is valid if the vehicle exhaust system leaks in such a manner as to dilute the exhaust gas being sampled by the gas analytical system. For the

purpose of emission control tests conducted at state facilities, tests will not be considered valid if the exhaust gas is diluted to such an extent that the sum of the carbon monoxide and carbon dioxide concentrations recorded for the idle speed reading from an exhaust outlet is six percent or less.

(2) No vehicle emission control test is valid if the engine idle speed exceeds 1300 RPM.

(3)(a) No vehicle emission control test for a 1981 or newer model vehicle is valid if any element of the following factory-installed motor vehicle pollution control systems have been disconnected, plugged, or otherwise made inoperative in violation of ORS 815.305(1), except as noted in ORS 815.305(2):

(A) Positive crankcase ventilation (PVC) system;

(B) Exhaust modifier system, including:

(i) Air injection system;

(ii) Thermal reactor system; or

(iii) Catalytic converter system.

(C) Exhaust gas recirculation (EGR) system;

(D) Evaporative control system including the gas cap;

(E) Spark timing system, including:

(i) Vacuum advance system; or

(ii) Vacuum retard system.

(F) Special emission control devices, including:

(i) Orifice spark advance control (OSAC);

(ii) Speed control switch (SCS);

(iii) Thermostatic air cleaner (TAC);

(iv) Transmission controlled spark (TCS);

(v) Throttle solenoid control (TSC);

(vi) Fuel filler inlet restrictor;

(vii) Oxygen sensor; or

(viii) Emission control computer.

(G) Maintenance indicators or on-board diagnostic indicators on 1996 or newer model year vehicles.

(b) The Department may provide alternative criteria for those required under subsection (a) of this section when it can be determined that the component or an acceptable alternative is unavailable. Such alternative criteria may be granted on the basis of the nonavailability of the original part, replacement part, or comparable alternative solution.

(4) No vehicle emission control test conducted for a 1981 or newer model vehicle is valid if any element of the factory-installed motor vehicle pollution control system has been modified or altered in such a manner so as to decrease its efficiency or effectiveness in the control of air pollution in violation of ORS 815.305(1), except as noted in ORS

815.305(2). For the purposes of this section, the following apply:

(a) The use of a nonoriginal equipment aftermarket part (including a rebuilt part) as a replacement part is not considered to be a violation of ORS 815.305, if a reasonable basis exists for knowing that such use will not adversely affect emission control efficiency.

The Department will maintain a listing of those parts that have been determined to adversely effect emission control efficiency;

(b) The use of a nonoriginal equipment aftermarket part or system as an add-on, auxiliary, augmenting, or secondary part or system, is not considered to be a violation of ORS 815.305, if such part or system is listed on the exemption list maintained by the Department;

(c) Adjustments or alterations of a particular part or system parameter, if done for purposes of maintenance or repair according to the vehicle or engine manufacturer's instructions, are not considered violations of ORS 815.305.

(5) A 1981 or newer model motor vehicle which has been converted to operate on gaseous fuels is in violation of ORS 815.305 when elements of the factory-installed motor vehicle air pollution control system are disconnected for the purpose of conversion to gaseous fuel as authorized by ORS 815.305.

*State effective: 10/14/99; EPA effective: 1/21/2005*

### **340-256-0400 Light Duty Motor Vehicle Emission Control Standards for Basic Program**

(1) Light Duty Diesel Motor Vehicle Emission Control Standards: All -- 1.5% CO -- No HC Check.

(2) Light Duty Gasoline Motor Vehicle Emission Control Standards: Two Stroke Cycle: All -- 7.0% CO -- No HC Check.

(3) Light Duty Gasoline Motor Vehicle Emission Control Standards: Four Stroke Cycle -- Passenger Cars:

(a) *1975–1980 Model Year:*

(A) With Catalyst: All 1.0% CO -- 220 ppm HC;

(B) Without Catalyst: All 2.5% CO -- 300 ppm HC.

(b) *1981 and Newer Model Year:* All:

(A) At idle -- 1.0% CO -- 220 ppm HC;

(B) At 2,500 RPM -- 1.0% CO -- 220 ppm HC.

(4) Light Duty Gasoline Motor Vehicle Emission Control Standards -- Light Duty Trucks:

(a) 6,000 GVWR or less:

(A) *1975–1980 Model Year:*

(i) With Catalyst: All -- 1.0% CO -- 220 ppm HC;

(ii) Without Catalyst: All -- 2.5% CO -- 300 ppm HC.

(B) *1981 and Newer Model Year:* All:

- (i) At idle -- 1.0% CO -- 220 ppm HC;
  - (ii) At 2,500 rpm -- 1.0% CO -- 220 ppm HC.
- (b) 6,001 to 8,500 GVWR:
- (A) 1975–1978 Model Year: All -- 2.5% CO -- 300 ppm HC;
  - (B) 1979–1980 Model Year:
    - (i) With Catalyst: All -- 1.0% CO -- 220 ppm HC;
    - (ii) Without Catalyst: All -- 2.5% CO -- 300 ppm HC.
  - (C) 1981 and Newer: All:
    - (i) At idle -- 1.0% CO -- 220 ppm HC;
    - (ii) At 2,500 rpm -- 1.0% CO -- 220 ppm HC.

(5) There shall be no visible emission during the steady-state unloaded and raised rpm engine idle portions of the emission test from either the vehicle's exhaust system or the engine crankcase. In the case of diesel engines and two-stroke cycle engines, the allowable visible emission shall be no greater than 20% opacity.

(6) The Director may establish specific separate standards, differing from those listed in sections (1) through (5) of this rule for vehicle classes which are determined to present prohibitive inspection problems using the listed standards.

*State effective: 10/14/99; EPA effective: 1/21/2005*

### **340-256-0410**

#### **5. Light Duty Motor Vehicle Emission Control Standards for Enhanced Program**

(1) Grams Per Mile (GPM) for Light Duty Passenger Cars (LDPC):

- (a) Model Year -- 1996 and Newer:
  - (A) Hydrocarbons (HC) -- 0.9;
  - (B) Carbon Monoxide(CO) -- 20;
  - (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 2.25.
- (b) Model Year -- 1983–1995:
  - (A) Hydrocarbons (HC) -- 1.2;
  - (B) Carbon Monoxide(CO) -- 30;
  - (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 3.00.
- (c) Model Year -- 1981–1982:
  - (A) Hydrocarbons (HC) -- 1.2;
  - (B) Carbon Monoxide(CO) -- 60;
  - (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 3.00.

(2) Grams Per Mile (GPM) for Light Duty Truck 1 (LDT1) 6,000 GVWR or Less:

- (a) Model Year -- 1996 and Newer 3750 Loaded Vehicle Weight or Less:

- (A) Hydrocarbons (HC) -- 0.9;
  - (B) Carbon Monoxide(CO) -- 20;
  - (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 2.25.
- (b) Model Year -- 1996 and Newer 3751 Loaded Vehicle Weight or More:
- (A) Hydrocarbons (HC) -- 1.2;
  - (B) Carbon Monoxide(CO) -- 26;
  - (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 2.70.
- (c) Model Year -- 1988–1995:
- (A) Hydrocarbons (HC) -- 2.4;
  - (B) Carbon Monoxide(CO) -- 80;
  - (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 3.75.
- (d) Model Year -- 1984–1987:
- (A) Hydrocarbons (HC) -- 2.4;
  - (B) Carbon Monoxide(CO) -- 80;
  - (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 6.75.
- (e) Model Year -- 1981–1983:
- (A) Hydrocarbons (HC) -- 5.1;
  - (B) Carbon Monoxide(CO) -- 140;
  - (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 6.75.
- (3) Grams Per Mile (GPM) for Light Duty Truck 2 (LDT2) 6,001 to 8500 GVWR:
- (a) Model Year-- 1996 and Newer 5750 Loaded Vehicle Weight or Less:
- (A) Hydrocarbons (HC) -- 1.2;
  - (B) Carbon Monoxide(CO) -- 26;
  - (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 2.70.
- (b) Model Year-- 1996 and Newer 5751 Loaded Vehicle Weight or More:
- (A) Hydrocarbons (HC) -- 1.2;
  - (B) Carbon Monoxide(CO) -- 30;
  - (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 3.00.
- (c) Model Year -- 1988–1995:
- (A) Hydrocarbons (HC) -- 2.4;
  - (B) Carbon Monoxide(CO) -- 80;
  - (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 5.25.
- (d) Model Year-- 1984–1987:
- (A) Hydrocarbons (HC) -- 2.4;
  - (B) Carbon Monoxide(CO) -- 80;

- (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 6.75.
- (e) Model Year -- 1981–1983:
  - (A) Hydrocarbons (HC) -- 5.1;
  - (B) Carbon Monoxide(CO) -- 140;
  - (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 6.75.

(4) The Director may establish specific separate standards, differing from those listed in sections (1) through (3) of this rule for vehicle classes which are determined to present prohibitive inspection problems using the listed standards.

*State effective: 10/14/99; EPA effective: 1/21/2005*

### **340-256-0420 Heavy-Duty Gasoline Motor Vehicle Emission Control Standards**

- (1) Carbon monoxide idle emission values not to be exceeded:
  - (a) 1975–1978 Model Year: 4.0%;
  - (b) 1979 and Newer Model Year without catalyst: 3.0%;
  - (c) 1985 and Newer Model Year with catalyst: 1.0%.
- (2) Carbon Monoxide nominal 2,500 rpm emission values not to be exceeded:
  - (a) 1975 and Newer Model Year without catalyst with carburetor: 3.0%;
  - (b) 1975 and Newer Model Year without catalyst with fuel injection: No Check;
  - (c) 1985 and Newer Model Year with catalyst: 1.0%.
- (3) Hydrocarbon idle emission values not to be exceeded:
  - (a) 1975–1978 Model Year: 500 PPM;
  - (b) 1979 and Newer Model Year without catalyst: 350 PPM;
  - (c) 1985 and Newer Model Year with catalyst: 220 PPM.
- (4) Hydrocarbon nominal 2,500 rpm emission values not be exceeded: 1985 and Newer Model Year with catalyst: 220 PPM.
- (5) There shall be no visible emission during the steady-state unloaded engine idle and raised rpm portion of the emission test from either the vehicle's exhaust system or the engine crankcase.
- (6) The Director may establish specific separate standards, differing from those listed in sections (1) through (4) of this rule for vehicle classes which are determined to present prohibitive inspection problems using the listed standards.

*State effective: 10/14/99; EPA effective: 1/21/2005*

### **340-256-0440 Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates**

- (1) Five separate classes of licenses are established as follows:
  - (a) Private Business Fleet;

- (b) Public Agency Fleet;
  - (c) Private Business Fleet Vehicle Emission Inspector;
  - (d) Public Agency Fleet Vehicle Emission Inspector;
  - (e) Vehicle Emission Inspector.
- (2) Application for a license must be completed on a form provided by the Department.
- (3)(a) Each fleet's license is valid for not more than a one year period and expires on December 31 of each year unless revoked, suspended, or returned to the Department;
- (b) Each Inspector's license is valid for not more than a two year period and expires on December 31 of every other year unless revoked, suspended, or returned to the Department.
- (4) The Department will not issue any license until the applicant has fulfilled all requirements and paid the required fee.
- (5) No license is transferable.
- (6) Each license may be renewed upon application and receipt of renewal fee if the application for renewal is made within the 30-day period prior to the expiration date and the applicant complies with all other licensing requirements.
- (7) A license may be suspended, revoked, or not renewed if the licensee has violated this Division or ORS 468A.350 to 468A.400, 815.295 to 815.325.
- (8) A Private Business Vehicle Emission Inspector or Public Agency Fleet Vehicle Emission Inspector license is valid only for inspection of and execution of Certificates of Compliance for motor vehicle pollution control systems and motor vehicles of the Private Business Fleet or Public Agency Fleet that employs the Private Business Fleet Vehicle Emission Inspector or Public Agency Fleet Vehicle Emission Inspector on a full time basis. The Department may authorize a Public Agency Fleet Vehicle Emission Inspector to perform inspections and execute Certificates of Compliance for vehicles of other governmental agencies if the inspector has contracted with that agency for that service and the Director approves the contract.
- (9) To initially receive or renew a license as a Private Business Fleet Vehicle Emission Inspector, a Public Agency Fleet Vehicle Emission Inspector or a Vehicle Emission Inspector, the applicant must be an employee of a Private Business Fleet, a Public Agency Fleet, the Vehicle Inspection Program of the Department, or an employee of an Independent Contractor and submit a completed application. All Inspectors must receive formal training and be licensed or certified to perform inspections pursuant to this Division. The duration of the training program for persons employed by a Private

Business Fleet or a Public Agency Fleet must be at least 16 hours.

(a) Training.

(A) Inspector training must include the following subjects:

- (i) The air pollution problems, its causes and effects;
- (ii) The purpose, function and goal of the inspection program;
- (iii) Inspection regulations and procedures;
- (iv) Technical details of the test procedure and the rationale for their design;
- (v) Test equipment operation, calibration and maintenance;
- (vi) Emission control device function, configuration and inspection;
- (vii) Quality control procedures and their purpose;
- (viii) Public relations;
- (ix) Safety and health issues related to the inspection process; and
- (x) OBD test systems.

(B) In order to complete the training requirement, a trainee must pass (minimum of 80% correct responses) a written test covering all aspects of the training. In addition, a hands-on test must be administered in which the trainee demonstrates without assistance the ability to conduct a proper inspection, to properly utilize equipment and to follow other procedures. Inability to properly conduct all test procedures shall constitute failure of the test. The Department will take appropriate steps to insure the security and integrity of the testing process.

(b) Licensing and certification.

(A) All Inspectors must be either licensed or certified by the Department in order to perform official inspections.

(B) Completion of Inspector training and passing required tests is a condition of licensing or certification.

(C) Inspector licenses and certificates are valid for no more than 2 years, at which point refresher training and testing are required before renewal. Alternative approaches based on more comprehensive skill examination and determination of Inspector competency may be used.

(D) Licenses and certificates are not a legal right, but rather, are a privilege

bestowed by the Department and conditional upon adherence to Department requirements.

(c) Enforcement against Inspectors. Any violations are subject to the Department's enforcement procedures.

(A) Whenever an Inspector intentionally improperly passes a vehicle for any required portion of the test, the Department will either suspend the Inspector for at least 6 months or assess a penalty equivalent to the Inspector's salary for the same time period.

(B) License or certificate suspension or revocation means the individual is barred from direct or indirect involvement in any inspection operation during the term of the suspension or revocation.

(10) To be licensed as a Private Business Fleet or a Public Agency Fleet, the applicant must:

(a) Employ on a full time basis a Private Business Fleet Vehicle Emission Inspector or;

(b) Employ on a full time basis a Public Agency Fleet Vehicle Emission Inspector; and

(c) Be equipped with an gas analytical system complying with criteria established in OAR 340-256-0450 or 340-256-0460;

(d) Be equipped with a sound level meter conforming to "**Requirements for Sound Measuring Instruments and Personnel**" (NPCS-2) manual, revised September 15, 1974, of this Department.

(e) If 1996 and newer light duty vehicles are a part of the self-inspected fleet of vehicles, the fleet must be equipped by January 1, 2001 with a scan tool for downloading vehicle OBD emissions data with criteria established in OAR 340-256-0465.

(11) No person licensed as a Private Business Fleet or Public Agency Fleet may advertise or represent himself as being licensed to inspect motor vehicles to determine compliance with the criteria and standards of OAR 340-256-0380 and 340-256-0400.

*State effective: 10/25/00; EPA effective: 1/21/2005*

### **340-256-0450 Gas Analytical System Licensing Criteria for Basic Program**

(1) Test equipment. Computerized test systems are required for performing any measurement on subject vehicles. Performance features of computerized test systems. The test equipment shall be certified to meet the requirements contained in **40 CFR Part 51 Appendix D (November 5, 1992)** and new equipment shall be subjected to acceptance test procedures to ensure compliance with program specifications.

(a) Emission test equipment shall be capable of testing all subject vehicles and shall be updated from time to time to accommodate new technology vehicles as well as changes to the Vehicle Inspection Program.

(b) At a minimum, emission test equipment:

(A) Shall be automated to the highest degree commercially available to minimize the potential for intentional fraud and/or human error;

(B) Shall be secure from tampering and/or abuse;

(C) Shall be based upon written specifications; and

(D) Shall be capable of simultaneously sampling dual exhaust vehicles.

(c) The vehicle owner or driver shall be provided with a computer-generated record of test results, including all of the items listed in **40 CFR Part 85, subpart W** as being required on the test record. The test report shall include:

(A) A vehicle description, including license plate number, vehicle identification number, and odometer reading;

(B) The date and time of the test;

(C) The name or identification number of individual(s) performing the tests and the location of the test station and lane;

(D) The type of test performed, including emission tests, visual checks for the presence of emission control components, and functional, evaporative checks;

(E) The applicable test standards;

(F) A statement indicating the availability of warranty coverage as required in **section 207** of the **Clean Air Act**;

(G) Certification that tests were performed in accordance with the regulations; and

(H) For vehicles that fail the tailpipe emission test, information on the possible causes of the specific pattern of high emission levels found during the test.

(2) Functional characteristics of computerized test systems. The test system is composed of emission measurement devices and other motor vehicle test equipment controlled by a computer.

(a) The test system shall automatically:

(A) Make a pass/fail decision for all measurements;

(B) Record test data to an electronic medium;

(C) Conduct regular self-testing of recording accuracy;

(D) Perform electrical calibration and system integrity checks before each test, as applicable; and

(E) Initiate system lockouts for:

(i) Tampering with security aspects of the test system;

(ii) Failing to conduct or pass periodic calibration or leak checks; and

(iii) A full data recording medium or one that does not pass a cyclical redundancy check.

(b) The test system shall insure accurate data collection by limiting, cross-checking; and/or confirming manual data entry.

(3) Gas analytical systems used by Private Business Fleets or Public Agency Fleets must meet the criteria established in this rule by not later than January 1, 1998.

*State effective: 10/14/99; EPA effective: 1/21/2005*

#### **340-256-0460 Gas Analytical System Licensing Criteria for Enhanced Program**

(1) Light Duty vehicles described in OAR 340-256-0300(1)(a)(B) may be tested with a gas analytical system that meets the equipment specification described in the **United States Environmental Protection Agency (EPA) High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications, April 1994**. This equipment is referred to as Laboratory Grade Inspection/Maintenance 240 (IM240) testing equipment.

(2) Alternatively, gas analytical systems meeting the EPA "Inspection Grade" (IG) criteria may be utilized. This system, capable of duplicating the IM240 driving cycle, consists of four main pieces of equipment:

- (a) Computer system;
- (b) Infrared exhaust gas analyzer capable of measuring at least CO, CO<sub>2</sub>, HC and NO<sub>x</sub>;
- (c) CVS system to capture exhaust flow during testing needed to convert the grams per mile readings and fuel economy; and
- (d) A dynamometer capable of simulating the IM240 driving cycle.

(3) Gas analytical systems used by Private Business Fleets or Public Agency Fleets must meet the criteria established in this rule by not later than July 1, 1998.

*State effective: 10/14/99; EPA effective: 1/21/2005*

#### **340-256-0465 Test Equipment Licensing Criteria for OBD Test Program**

This equipment must contain the standard terminal Diagnostic Link Connector for OBD systems and be capable of the following:

- (1) Making an automatic pass/fail decision based on malfunction indicator light observations and vehicle OBD system download.
- (2) Transferring electronic vehicle test result to the VIP central data server for emissions data.
- (3) Meeting additional fleet operations specifications as prescribed by the Department.

*State effective: 10/14/99; EPA effective: 1/21/2005*

#### **340-256-0470 Agreement With Independent Contractor; Qualifications of Contractor; Agreement Provisions**

(1) The Director is authorized to enter into an emissions inspection agreement with one or more independent contractors, subject to public bidding, to provide for the construction, equipment, establishment, maintenance and operation of any emissions inspection stations or activities in such numbers and locations as may be required to provide vehicle owners reasonably convenient access to inspection facilities for the purpose of obtaining compliance with rules contained in this Division.

(2) The Director is prohibited from entering into an emissions inspection agreement with any independent contractor who:

(a) Is engaged in the business of manufacturing, selling, maintaining or repairing vehicles, except that the independent contractor shall not be precluded from maintaining or repairing any vehicle owned or operated by the independent contractor;

(b) Does not have the capability, resources or technical and management skill to adequately construct, equip, operate or maintain a sufficient number of emissions inspection stations to meet the demand for inspection of every vehicle which is required to be submitted for inspection pursuant to this Division.

(3) All persons employed by the independent contractor in the performance of an emissions inspection agreement are employees of the independent contractor and not of this state. An employee of the independent contractor shall not wear any badge, insignia, patch, emblem, device, word or series of words which would tend to indicate that such person is employed by this state. Employees of the independent contractor are specifically prohibited under this subsection from wearing the flag of this state, the words "state of Oregon," the words "emissions inspection program" or any similar emblem or phrase.

(4) The emissions inspection agreement authorized by this rule shall contain at least the following provisions:

(a) A contract term or duration of not more than ten years with reasonable compensation to the contractor if the provisions of this rule are repealed during the ten year term;

(b) That nothing in the agreement or contract requires the state to purchase any asset or assume any liability if such agreement or contract is not renewed;

(c) The minimum requirements for adequate staff, equipment, management and hours and place of operation of emissions inspection stations;

(d) The submission of such reports and documentation concerning the operation of emissions inspection stations as the Director and the Attorney General may require;

(e) Surveillance by the Department of Environmental Quality and the Department of Administrative Services to ensure compliance with vehicle emissions testing standards, procedures, rules and laws;

(f) The right of this state, upon providing reasonable notice to the independent contractor, to terminate the contract with the independent contractor and to assume operation of the vehicle emissions inspection program;

(g) The right of this state upon termination of the term of the agreement or upon assumption of the operation of the program to have transferred and assigned to it for reasonable compensation any interest in land, buildings, improvements, equipment, parts, tools and services used by the independent contractors in their operation of the program;

(h) The right of this state upon termination of the term of the agreement or assumption of the operation of the program to have transferred and assigned to it any contract rights, and related obligations, for land, buildings, improvements, equipment, parts, tools and services used by the independent contractors in their operation of the program;

(i) The obligation of the independent contractors to provide in any agreement to be executed by them, and to maintain in any agreements previously executed by them, for

land, buildings, improvements, equipment, parts, tools and services used in their operation of the program for the right of the independent contractors to assign to this state any of their rights and obligations under such contract;

(j) The amounts of liquidated damages payable by this state to the independent contractor if the state exercises its right to terminate the contract at the conclusion of the first, second, third or fourth year of the contract pursuant to section (f) of this rule. The damages recoverable by the independent contractor if the state exercises its right to terminate the contract shall be limited to the liquidated damages specified in the contract;

(k) Any other provision deemed necessary by the Department of Administrative Services for enforcement of the emissions inspection agreement.

(5) In conjunction with the Attorney General and the Department of Administrative Services, the Department of Environmental Quality shall establish bid specifications or contract terms for a contract with an independent contractor as provided in this rule, review bids for award of a contract with the independent contractors and negotiate any terms of a contract with the independent contractors.

(6) Before entering into any contract the Director shall inquire into the marketplace of independent contractors and based upon this review shall select the independent contractor who in the sole discretion of the Director is best qualified to perform the duties required by this rule and can be operational on January 1, 1998. After a contract is awarded to an independent contractor, the Director may modify the contract with the independent contractor to allow the contractor and the state to comply with amendments to applicable statutes or rules. This modification is exempt from public bidding and may include the addition, deletion or alteration of any contract provision in order to make compliance feasible, including inspection fees and services rendered. Provisions relating to contract term or duration may be amended, except that the term or duration of the contract shall not be extended more than three and one-half years beyond the term of the original contract as awarded. If the Director cannot negotiate an acceptable modification of the contract, the state may terminate the contract.

*State effective: 10/14/99; EPA effective: 1/21/2005*

## **DIVISION 258**

### **MOTOR VEHICLE FUEL SPECIFICATIONS**

#### **340-258-0010 DEFINITIONS**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

(1) "Attest Engagement" means a review of nonfinancial records by a CPA.

(2) "Averaging Period" means the period of time over which all gasoline sold or dispensed for use in a control area by any control area responsible party must comply with the average oxygen content standard.

- (3) "Blend" means regular, unleaded, supreme or other trade names for gasoline products containing differing levels of octane.
- (4) "Blender Control Area Responsible Party (Blender CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending facility.
- (5) "Bulk gasoline terminal" means a gasoline storage facility which receives gasoline from refineries primarily by pipeline, ship, or barge, and delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck.
- (6) "Carrier" means any person who transports, stores, or causes the transportation or storage of gasoline at any point in the gasoline distribution network, without taking title to or otherwise having ownership of the gasoline and without altering the quality or quantity of the gasoline.
- (7) "Control Area" means a geographic area listed in OAR 340-204-0090 in which only gasoline that meets the requirements of OAR 340-258-0110 through 340-258-0310 may be sold or dispensed.
- (8) "Control Area Oxygenate Blending Facility" means any facility or truck at which oxygenate is added to gasoline that is intended for use in any control area, and at which the quality and quantity of gasoline is not otherwise altered, except through the addition of deposit-control additives.
- (9) "Control Area Responsible Party (CAR)" means a person who owns gasoline and/or oxygenates that is sold or dispensed from a control area terminal.
- (10) "Control Area Terminal" means a terminal storage facility that is capable of receiving gasoline in bulk by pipeline or marine vessel, or at which gasoline is altered either in quantity or quality, excluding the addition of deposit control additives. Gasoline that is intended for use in any control area is sold or dispensed into trucks at these control area terminals.
- (11) "Control Period" means the period from November 1 through February 29, during which oxygenated gasoline must be sold or dispensed within the control area.
- (12) "Department" means the Department of Environmental Quality.
- (13) "Distributor" means a person who transports or stores or causes the transportation or storage of gasoline at any point between a gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.
- (14) "EPA" means the U.S. Environmental Protection Agency.
- (15) "EPA Substantially Similar Ruling" means a fuel or fuel additive for general use in light-duty vehicles manufactured after the model year 1974, that is substantially similar to a fuel or fuel additive used to certify a model year 1975 or newer vehicle or engine under **42 U.S.C. 7525** (Clean Air Act, Section 206), as amended through November 15, 1990 and any amendments or modifications thereto, and as specified in EPA's Interpretative Ruling at **56 Federal Register 5352 - 5356**, revised through February 11, 1991, and that the EPA has ruled meets the following criteria:
  - (a) The fuel contains carbon, hydrogen, and any or all of the elements of oxygen, nitrogen, or sulfur exclusively, with the exception of trace levels of impurities which produce gaseous combustion products, in the form of some combination of:
    - (A) Hydrocarbons;
    - (B) Aliphatic ethers;
    - (C) Aliphatic alcohols other than methanol;
    - (D) Up to 0.3 percent methanol by volume;

- (E) Up to 2.75 percent methanol by volume with an equal amount of butanol, or high molecular weight alcohol; or
- (F) A fuel additive at a concentration of no more than 0.25 percent by weight which contributes no more than 15 ppm sulfur by weight to the fuel.
- (b) The fuel contains no more than 2.0 percent oxygen by weight, except that fuels containing aliphatic ethers and/or alcohols (except methanol) must contain no more than 2.7 percent oxygen by weight;
- (c) The fuel possesses, at the time of manufacture, the physical and chemical characteristics of an unleaded gasoline as specified by **ASTM Standard D4814-88** for at least one of the Seasonal and Geographical Volatility Classes specified in the standard; and
- (d) The fuel contains only:
  - (A) Carbon;
  - (B) Hydrogen; and
  - (C) Any or all of the following elements: oxygen, nitrogen and sulfur.
- (16) “EPA Waiver” means any current motor fuel waivers granted by the U.S. Environmental Protection Agency under authority of **42 U.S.C. 745(f)(4)** (Clean Air Act, Section 211), as amended through November 15, 1990 and any amendments or modifications thereto.
- (17) “Gasoline” means:
  - (a) as used in OAR 340-258-0100 through 340-258-0310 any fuel sold for use in motor vehicles and motor vehicle engines and commonly or commercially known or sold as gasoline;
  - (b) as used in OAR 340-258-0400 any petroleum distillate having a Reid vapor pressure of 27.6 kPa (4.0 psi) or greater which is used to fuel internal combustion engines.
- (18) “Motor Vehicle” means any self-propelled vehicle designed and used for transporting persons or property on a street or highway.
- (19) “Nonoxygenated Gasoline” means any gasoline which does not meet the definition of oxygenated gasoline.
- (20) “Oxygen Content of Gasoline Blends” means the percentage of oxygen by weight contained in a gasoline blend, based upon its percentage oxygenate by volume, excluding denaturants and other non-oxygen-containing components. All measurements must be adjusted to 60° F.
- (21) “Oxygenate” means any substance which, when added to gasoline, increases the amount of oxygen in that gasoline blend. Lawful use of any combination of these substances requires that they be “Substantially Similar” under Section 211(f)(1) of the Clean Air Act (CAA), or be permitted under a waiver granted by the Administrator of the Environmental Protection Agency under the authority of Section 211(f)(4) of the CAA.
- (22) “Oxygenate Blender” means a person who owns, leases, operates, controls, or supervises a control area oxygenate blending facility.
- (23) “Oxygenated Gasoline” means any gasoline which when supplied on a per gallon basis contains at least 2.7 percent oxygen by weight, except where otherwise required by OAR 340-258-0310, or which when supplied using the averaging method contains at least 2.0 percent oxygen by weight, and has been included in the oxygenated gasoline program accounting by a control area responsible party and which is

- intended to be sold or dispensed for use in any control area during a control period.
- (24) “Permitted Control Area Responsible Parties” means any owner of gasoline being imported or sold at or from a terminal who obtains a terminal operator permit to market gasoline in a control area during the control period.
  - (25) “Refiner” means a person who owns, leases, operates, controls, or supervises a refinery that produces gasoline for use in a control area.
  - (26) “Refinery” means a plant at which gasoline is produced.
  - (27) “Reseller” means a person who purchases gasoline and resells or transfers it to a retailer or wholesale purchaser-consumer.
  - (28) “Retail Outlet” means any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in motor vehicles.
  - (29) “Retailer” means any person who owns, leases, operates, controls, or supervises a retail outlet.
  - (30) “Substantially Similar” means EPA substantially similar ruling.
  - (31) “Terminal” means a facility capable of receiving gasoline by pipeline or marine vessel at which gasoline is sold, or dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer facilities.
  - (32) “Wholesale Purchaser-Consumer” means any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least 550 gallon capacity substantially under the control of that organization.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

## **OXYGENATED GASOLINE**

### **340-258-0100 POLICY**

The Environmental Quality Commission finds and determines that control area responsible parties, distributors and retail outlets are “Indirect Sources” as defined in OAR 340-254-0030.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0110 PURPOSE AND GENERAL REQUIREMENTS**

- (1) Pursuant to ORS 468A.420, OAR 340-258-0100 through 340-258-0310 apply to:
  - (a) A person who refines, distributes, blends, supplies, sells, offers for sale, or otherwise markets gasoline for use in motor vehicles; and
  - (b) Permitted control area responsible parties who own gasoline being imported or being sold at or from terminals who market gasoline.
- (2) Except as provided in OAR 340-258-0300, the requirements of OAR 340-258-0110 through 340-258-0310 apply only from November 1 to February 29, and only within a control area listed in OAR 340-204-0090.
- (3) The labeling requirements of OAR 340-258-0300 apply only within a control area during the control period.  
**[NOTE: This applies only to the Department rules and a dispenser is still responsible for complying with the disclosure requirements of ORS 646.915.]**
- (4) To reduce carbon monoxide air pollution from motor vehicles in a control area, OAR 340-258-0110 through 340-258-0310 requires:
  - (a) The dispensing into gasoline powered motor vehicles of an oxygenated

- gasoline with an oxygen content that meets the requirements of OAR 340-258-0140 or 340-258-0150, and 340-258-0160, as applicable;
- (b) That a dispenser where an oxygenated gasoline is dispensed be labeled as required by OAR 340-258-0300;
  - (c) That oxygenated gasoline be blended as required by OAR 340-258-0170; and
  - (d) A person who refines, distributes, blends, supplies, or sells an oxygenated gasoline to meet the recordkeeping and reporting requirements of OAR 340-258-0110 through 340-258-0310.
- (5) Nothing in OAR 340-258-0110 through 340-258-0310 precludes a person from using, refining, distributing, blending, supplying, selling, or otherwise marketing fuel that meets the requirements of OAR 340-258-0110 through 340-258-0310:
- (a) Between March 1 and October 31 in a control area; or
  - (b) At any time in any other location statewide.
- (6) Nothing in OAR 340-258-0110 through 340-258-0310 precludes a person from using, refining, distributing, blending, supplying, selling, or otherwise marketing nonoxygenated fuel:
- (a) Between November 1 and February 29 outside of control areas;
  - (b) At dispensing facilities where motor vehicles are not fueled.
- (7) Except as provided in OAR 340-258-0230, the following dispensing sites are exempt from OAR 340-258-0110 through 340-258-0310 and may dispense nonoxygenated gasoline in control areas during control periods if fuel will not be used in motor vehicles, including but not limited to: Airports, marinas, saw shops, farms dispensing to farm equipment not used as a motor vehicle, and other facilities not dispensing fuel into motor vehicles.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0120 SAMPLING AND TESTING FOR OXYGEN CONTENT**

- (1) To determine compliance with the requirements of OAR 340-258-0110 through 340-258-0310, the oxygen content of gasoline must be determined by:
- (a) Sampling, using the sampling methods specified in **40 CFR 80, Appendix D**, as amended through July 1, 1991, the provisions of which are incorporated by reference in this rule, to obtain a representative sample of the gasoline to be tested;
  - (b) Testing, using the test method specified in **ASTM 4815-89** or other test methods determined by the Department and EPA as being equivalent, to determine the mass concentration of each oxygenate in the gasoline sampled; and
  - (c) Oxygen content calculations that are made as follows: Calculate the oxygen content of the gasoline sampled by multiplying the volume concentration of each oxygenate in the gasoline sampled by the oxygen molecular weight contribution of the oxygenate set forth in section (2) of this rule, with volume measurements adjusted to 60 degrees F.
- (2) The oxygen molecular weight contributions of an oxygenate approved for use under OAR 340-258-0110 through 340-258-0310 are set out in **Table A**.

<b>TABLE A</b>
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<b>COMPARISON OF SPECIFIC GRAVITIES AND OXYGEN MASS FRACTION OF PURE OXYGENATES</b>		
	<b>Specific Gravity</b>	<b>Oxygen Mass</b>
	<b>60/60 F</b>	<b>Fraction</b>
Methyl Alcohol	0.7963	0.4993
Ethyl Alcohol	0.7939	0.3473
n-Propyl Alcohol	0.8080	0.2662
Isopropyl Alcohol	0.7899	0.2662
n-Butyl Alcohol	0.8137	0.2158
iso-Butyl Alcohol	0.8058	0.2158
sec-Butyl Alcohol	0.8114	0.2158
tertiary-Butyl Alcohol	0.7922	0.2158
Methyl tertiary-Butyl Ether	0.7460	0.1815
Ethyl tertiary-Butyl Ether	0.7452	0.1566
tertiary Amyl Methyl Ether	0.7752	0.1566

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0130 COMPLIANCE OPTIONS**

Each CAR or blender CAR must comply with applicable oxygen content standards set out in OAR 340-258-0140(1), 340-258-0150(1), and 340-258-0170 by means of either the per gallon compliance option established in OAR 340-258-0140 or the averaging method compliance option established in OAR 340-258-0150.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0140 PER GALLON OXYGEN CONTENT STANDARD**

- (1) All gasoline sold or dispensed for use during the control period described in OAR 340-258-0110(2), for use in each control area described in OAR 340-204-0090, by each CAR or blender CAR using the Per Gallon Oxygen Content Standard Compliance Option, must be blended to contain not less than 2.7 percent oxygen by weight, except where otherwise required by OAR 340-258-0310. Oxygen content calculations must be performed as required in OAR 340-258-0120.
- (2) Compliance calculation on a per gallon basis:
  - (a) Each gallon of gasoline sold or dispensed by a CAR or blender CAR for use within each control area during the control period shall have an oxygen content of at least 2.7 percent by weight, except where otherwise required by OAR340-258-0310;
  - (b) In addition, the CAR or blender CAR is prohibited from selling or purchasing oxygen credits based on gasoline for which compliance is calculated under this

alternative per gallon method.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0150 AVERAGE OXYGEN CONTENT STANDARD**

- (1) All gasoline sold or dispensed for use during the control period described in OAR 340-258-0110(2), for use in each control area described in OAR 340-204-0090, by each CAR or blender CAR using the Average Oxygen Content Standard Compliance Option, must be blended for each averaging period to contain an average oxygen content of not less than 2.7 percent by weight, except where otherwise required by OAR 340-258-0310. Oxygen content calculations must be performed as required in OAR 340-258-0120.
- (2) The averaging period for all gasoline sold or dispensed in a control area is the four-month control period established in OAR 340-258-0110(2).
- (3) Compliance calculation on average basis:
  - (a) To determine compliance with the standards in section (1) of this rule, the CAR or blender CAR shall, for each averaging period and for each control area:
    - (A) Calculate the total volume of gasoline sold or dispensed for use in the control area which is the sum of:
      - (i) The volume of each separate batch or truck load of oxygenated gasoline that is sold or dispensed;
      - (ii) Minus the volume of each separate batch or truck load of oxygenated gasoline that is sold or dispensed in a different control area;
      - (iii) Minus the volume of each separate batch or truck load of oxygenated gasoline that is sold or dispensed in any non-control area.
    - (B) Calculate the required total oxygen credit units. Multiply the total volume in gallons of oxygenated gasoline sold or dispensed into the control area (as determined by paragraph (3)(a)(A) of this rule) by 2.7 percent, except where otherwise required by OAR 340-258-0310;
    - (C) Calculate the actual total oxygen units generated. The actual total oxygen credit units generated is the sum of the volume of each batch or truck load of oxygenated gasoline that was sold or dispensed in the control area (as determined by paragraph (3)(a)(A) of this rule) multiplied by the actual oxygen content by weight associated with each batch or truck load;
    - (D) Calculate the adjusted actual total oxygen credit units. The adjusted actual total oxygen content credit units is the sum of the actual total oxygen credit units generated (as determined in paragraph (3)(a)(C) of this rule):
      - (i) Plus the total oxygen credit units purchased or acquired through trade; and
      - (ii) Minus the total oxygen credit units sold or given away through trade.
    - (E) Compare the adjusted actual total oxygen credit units with the required total oxygen credit units. If the adjusted actual total content oxygen credit units is greater than or equal to the required total oxygen credit units, then the standard in section (1) of this rule is met. If the adjusted actual total oxygen credit units is less than the required total oxygen credit units the purchase of oxygen credit units is required in order to achieve compliance;
    - (F) In transferring oxygen credit units, the transferor shall provide the transferee with the volume and oxygen content by weight of the gasoline

associated with the credits.

- (b) To determine the oxygen credit units associated with each batch or truck load of oxygenated gasoline sold or dispensed into the control area, use the running weighted oxygen content (RWOC) of the tank from which the batch or truck load was received at the time the batch or truck load was received. In the case of batches or truck loads of gasoline to which oxygenate is added outside of the terminal storage tank from which it was received, use the weighted average of the RWOC and the oxygen content added as a result of the volume of the additional oxygenate added;
- (c) Running weighted oxygen content (RWOC). The RWOC accounts for the volume and oxygen content of all gasoline which enters or leaves the terminal storage tank, and all oxygenates which are added to the tank. The RWOC must be calculated each time gasoline enters or leaves the tank or whenever oxygenates are added to the tank. The RWOC is calculated weighing the following:
- (A) The volume and oxygen content of the gasoline in the storage tank at the beginning of the averaging period;
  - (B) The volume and oxygen content by weight of gasoline entering the storage tank;
  - (C) The volume and oxygen content by weight of gasoline leaving the storage tank; and
  - (D) The volume, type and oxygen content by weight of the oxygenate added to the storage tank.
- (d) Credit transfers. Credit transfer may be used in the compliance calculations in subsection (3)(a) of this rule, provided that:
- (A) The credits are generated in the same control area in which they are used; no credits may be transferred between control areas;
  - (B) The credits are generated in the same averaging period as they are used;
  - (C) The ownership of credits is transferred only between properly registered CARs or blender CARs;
  - (D) The credit transfer agreement is made no later than 30 days after the final day of the averaging period in which the credits are generated; and
  - (E) The credits are properly created.
- (e) Improperly created credits:
- (A) No party may transfer any credits to the extent that such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this paragraph are improperly created credits;
  - (B) In the case of credits which were improperly created, the following subparagraphs apply:
    - (i) Improperly created credits may not be used, regardless of a credit transferee's good faith belief that it was receiving valid credits;
    - (ii) The transfer of credits in violation of paragraph (A) of this subsection constitutes a violation of the requirements of section (1) of this rule; and
    - (iii) Where any credits are transferred in violation of paragraph (A) of this subsection, the transferor's properly-created credits will be applied first to any credit transfers before the transferor may apply any credits to achieve its own compliance;
    - (iv) Where any credits are transferred in violation of paragraph (A) of this

subsection, the transferor shall be held legally and financially liable for any penalties or damages incurred by the transferee as a result of the invalid transaction.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0160 MINIMUM OXYGEN CONTENT**

- (1) Any gasoline sold or dispensed by a CAR or a blender CAR for use within a control area during the control period, must contain not less than the minimum percent oxygen by weight allowed in the Oxygen Content Standard listed below, except where otherwise required by OAR 340-258-0310:
  - (a) Minimum oxygen content when using the Per Gallon Oxygen Content Standard Compliance Option is 2.7 percent oxygen by weight, unless it is sold or dispensed to another registered CAR or blender CAR. This requirement begins no less than five working days before the control period and applies until the end of that period;
  - (b) Minimum oxygen content when using the Average Oxygen Content Standard Compliance Option is 2.0 percent oxygen by weight, unless it is sold or dispensed to another registered CAR or blender CAR. This requirement begins at least five working days before the control period and applies until the end of that period.
- (2) The requirements of this rule apply to all persons downstream of the CAR. Any gasoline offered for sale, sold or dispensed to an ultimate consumer within a control area must contain not less than:
  - (a) 2.7 percent oxygen by weight when supplied by a CAR or blender CAR who uses the Per Gallon Oxygen Content Standard Compliance Option, except where otherwise required by OAR 340-258-0310. This requirement applies during the entire control period;
  - (b) 2.0 percent oxygen by weight when supplied by a CAR or blender CAR who uses the Average Oxygen Content Standard Compliance Option. This requirement applies during the entire control period.
- (3) A refiner or importer shall determine the oxygen content of gasoline produced by use of an applicable method described in OAR 340-258-0130. This determination must include the percent oxygenate by weight, the type of oxygenate and percent by volume.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0170 OXYGENATED GASOLINE BLENDING**

- (1) In addition to the other applicable requirements of OAR 340-258-0110 through 340-258-0310, no person may refine, distribute, blend, supply, sell, offer for sale or otherwise market any unleaded oxygenated gasoline for use in a motor vehicle unless that product:
  - (a) Has received a waiver from the U.S. Environmental Protection Agency (EPA) under **42 U.S.C. 7545(f)(4)**, as amended through November 15, 1990 and any amendments or modifications thereto; or
  - (b) Meets EPA's "substantially similar" ruling for a fuel or fuel additive used to certify a model year 1975 or newer vehicle or engine under **42 U.S.C. 7525** (Clean Air Act), as amended through November 15, 1990 and any amendments or

modifications thereto.

- (2) Only an oxygenate that is found to be acceptable under EPA's "substantially similar" ruling may be used in gasoline containing lead to meet the oxygenate requirements of OAR 340-258-0110 through 340-258-0310.
- (3) The requirements of this rule do not affect the blending into leaded gasoline of a compound that does not require an EPA waiver or an EPA "substantially similar" ruling.
- (4) Only those oxygenates and concentrations listed below and any gasoline designated by EPA as substantially similar are allowed:
  - (a) Blends of up to ten percent by volume anhydrous ethanol (200 proof) (commonly referred to as the "gasohol" waiver);
  - (b) Blends of methanol and gasoline grade tertiary butyl alcohol (GTBA) such that the total oxygen content does not exceed 3.5 percent by weight and the ratio of methanol to GTBA is less than or equal to one. It is also specified that this blended fuel must meet ASTM volatility specifications (commonly referred to as the "ARCO" waiver);
  - (c) Blends of up to 5.0 percent by volume methanol with a minimum of 2.5 percent by volume cosolvent alcohols having a carbon number of four or less (i.e., ethanol, propanol, butanol and/or GTBA). The total oxygen must not exceed 3.7 percent by weight, and the blend must meet ASTM volatility specifications as well as phase separation and alcohol purity and inhibitor specifications (commonly referred to as the "DuPont" waiver);
  - (d) Blends up to 5.0 percent by volume methanol with a minimum of 2.5 percent by volume cosolvent alcohols having a carbon number of eight or less. The total oxygen must not exceed 3.7 percent by weight and the blend must meet ASTM volatility specifications as well as phase separation and alcohol purity and inhibitor specifications (commonly referred to as the "Octamix" waiver);
  - (e) Blends up to 15.0 percent by volume methyl tertiary butyl ether (MTBE) which must meet the ASTM D4614 specifications. Blenders must take precautions that the blends are not used as base gasolines for other oxygenated blends (commonly referred to as the "Sun" waiver);
  - (f) Blends of aliphatic alcohols other than methanol and aliphatic ethers, provided the oxygen content does not exceed 2.7 percent by weight;
  - (g) Blends of methanol up to 0.3 percent by volume exclusive of other oxygenates;
  - (h) Blends up to 2.75 percent by volume methanol with an equal volume of butanol or alcohols of a higher molecular weight.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0180 REGISTRATION**

- (1) At least 30 days before the control period in which a person meets the definition of CAR or blender CAR, that person shall petition for registration as a CAR or blender CAR. A person may petition for registration as a CAR or blender CAR after the beginning of the control period but should also do so at least 30 days before conducting activities as a CAR or blender CAR. A petition for registration must be on forms approved by, and available from the Department, and must include:
  - (a) The name and business address of the control area responsible party;
  - (b) The address and physical location of each of the control area terminals from

- which the control area responsible party operates;
- (c) The address and physical location of each control area oxygenate blender facility which is owned, leased, operated, controlled or supervised by a blender CAR; and
- (d) The address and physical location where documents required to be retained by this rule will be kept by the control area responsible party.
- (2) Within 30 days after any occasion when the registration information previously supplied by a control area responsible party becomes incomplete or inaccurate, the CAR or blender CAR shall submit updated registration information to the Department.
- (3) The Department will issue each CAR or blender CAR a unique identification number within 30 days after submission of a registration application to the Department. No person may participate in the averaging program under OAR 340-258-0150 as a CAR or blender CAR until the Department has issued notice that registration as a CAR or blender CAR has occurred, and a unique CAR identification number. Registration is valid for the time period specified by the Department.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0190 CAR, DISTRIBUTOR AND RETAIL OUTLET OPERATING PERMITS**

Each CAR, distributor and retail outlet supplying gasoline to a control area during a control period shall apply for and receive a permit as specified by OAR 340-258-0200.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0200 OWNERS OF GASOLINE AT TERMINALS, DISTRIBUTORS AND RETAIL OUTLETS REQUIRED TO HAVE INDIRECT SOURCE OPERATING PERMITS**

The owner of gasoline at any gasoline terminal, distributor or retail outlet (defined in OAR 340-258-0010) shall not supply gasoline to any oxygenated gasoline control area during the control period (defined in OAR 340-258-0010) without an approved Indirect Source Operating Permit issued by the Department or Regional Authority having jurisdiction:

- (1) An Indirect Source Operating Permit must be renewed yearly, prior to supplying any gasoline to an oxygenated gasoline control area during the control period.
- (2) Persons applying for an Indirect Source Operating Permit shall at the time of application pay the following fees:
- (a) Gasoline Terminals — \$2,500;
  - (b) Gasoline Distributors — \$250.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0210 RECORDKEEPING**

- (1) All persons in the gasoline distribution network shall maintain records containing the applicable compliance information described in this rule. The records must be kept by the regulated persons for at least two years:
- (2) Refiners and importers shall, for each separate quantity of gasoline produced or

imported for use in a control area during the control period, maintain records containing results of any tests needed to determine the types of oxygenates and percentage by volume:

- (a) Oxygenate type;
- (b) Oxygenate content by volume;
- (c) Oxygen content by weight;
- (d) Total volume; and
- (e) Name and address of the party to whom each separate quantity of gasoline was sold or transferred.

(3) A person who owns, leases, operates or controls a gasoline terminal that serves a control area shall maintain records containing:

(a) The name and address of the owner of each batch of gasoline handled during the control period;

(b) The volume of each batch or truck load of gasoline going into or out of the terminal;

(c) The RWOC of all batches or truck loads of gasoline leaving the terminal;

(d) The type of oxygenate, purity and percentage by volume if available;

(e) The oxygen content by weight of all batches or truck loads received at the terminal;

(f) Information of each tank truck sale or batch of gasoline, as to whether it was designated for use within a control area or not;

(g) The name and address of the person to whom the gasoline was sold or transferred and the date of the sale or transfer; and

(h) Results of the tests for oxygenates, if performed, of each sale or transfer and who performed the tests.

(4) CARs and blender CARs must maintain records containing the information listed in section (3) of this rule, plus the following information:

(a) CAR or blender CAR identification number;

(b) Records supporting and demonstrating compliance with the Per Gallon Oxygen Content Standard listed in OAR340-258-0140; or

(c) Records supporting and demonstrating compliance with the Average Oxygen Content Standard listed in OAR 340-258-0150:

(A) For any credits bought, sold, traded or transferred, the date of each transaction, the name, address and CAR or blender CAR number of the CAR or blender CAR involved in each transaction, and the amount of credit units (oxygen content and volume of gasoline) transferred; credit units transferred must be accompanied by a demonstration of how those credits were calculated, including adequate documentation that both parties have agreed to all credit transactions;

(B) The name and address of the auditor, and the results of the attest engagement conducted under OAR 340-258-0290;

(C) The name and address of the person from whom each shipment of gasoline was received, and the date when it was received;

(D) Data on each shipment of gasoline received, including:

(i) The volume of each shipment;

(ii) The type of oxygenate, purity and percentage by volume; and

(iii) Oxygen content by weight.

(E) The volume of each receipt of bulk oxygenates;

- (F) The name and address of the persons from whom bulk oxygenates was received;
  - (G) The date and destination of each sale of gasoline, whether it was intended for use within a control area or not;
  - (H) Data on each shipment of gasoline sold or dispensed including:
    - (i) The volume of each shipment;
    - (ii) The type of oxygenate, purity and percentage by volume; and
    - (iii) Oxygen content by weight.
  - (I) Documentation of the results of all required tests done regarding the oxygen content of the gasoline; and
  - (J) The names, addresses and CAR or blender CAR identification numbers of the persons to whom any gasoline was sold or dispensed, and the dates of each transaction.
- (5) Retailers and wholesale purchaser-consumers within a control area shall maintain the following records which shall be available for Department inspection upon request:
- (a) The names, addresses and CAR or blender CAR identification number of each person from whom a shipment of gasoline was purchased or received, and the date when each shipment was received; and
  - (b) Data on each shipment bought, sold or transported including:
    - (A) The volume of each shipment;
    - (B) The type of oxygenate, purity and percentage by volume;
    - (C) Oxygen content by weight.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-257-0220 REPORTING**

- (1) Each CAR or blender CAR shall submit a report for each control period defined in OAR 340-258-0110(2), reflecting the compliance information detailed in OAR 340-258-0140 or 340-258-0150, as applicable. Reports are due to the Department on the 30th day of the month following the close of the control period for which the information is required. Reports must be filed on forms provided by the Department.
- (2) If the CO Contingency Provision, as specified in OAR340-258-0310, is triggered, each CAR or blender CAR shall submit the information described in section (1) of this rule after the first half of the control period and at the end of the control period. Reports are due to the Department on the 30th day of the month following the end of each two month segment of the control period.
- (3) Each time that physical custody or title of gasoline destined for a control area is transferred, except when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee, in addition to, or as part of, normal bills of lading or invoices, a transfer document containing information on the shipment. The transfer document must accompany every shipment of gasoline to a control area after it has been dispensed by a terminal, or the information must be included in the normal paperwork that accompanies each shipment of gasoline. The information must legibly and conspicuously contain the following information:
  - (a) The date of the transfer;
  - (b) The name, address and CAR or blender CAR identification number, if applicable of the transferor;

- (c) The name, address and CAR or blender CAR identification number, if applicable, of the transferee;
  - (d) The volume of gasoline being transferred;
  - (e) The proper identification of the gasoline as nonoxygenated or oxygenated;
  - (f) The location of the gasoline at the time of the transfer;
  - (g) The type of oxygenate and purity;
  - (h) The percentage by volume, to the nearest 0.1 percent, of oxygenate in the fuel;
- and
- (i) For gasoline in the gasoline distribution network between the refinery or import facility and the covered area terminal, the oxygen content by weight and the oxygenate volume of the gasoline.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0230 PROHIBITED ACTIVITIES**

- (1) During the control period, no refiner, importer, oxygenate blender, carrier, distributor or reseller may manufacturer, sell, offer for sale, dispense, supply, offer for supply, store, transport or cause the transportation of:
  - (a) Gasoline that contains less than 2.0 percent oxygen by weight, for use during the control period, in a control area; or
  - (b) Gasoline represented as oxygenated which has an oxygen content that is improperly stated in the documents that accompany the gasoline.
- (2) No retailer or wholesale purchaser-consumer may dispense, offer for sale, sell, or store, for use during the control period, gasoline that contains less than 2.7 percent oxygen by weight in a control area when supplied by a CAR using the Per Gallon Oxygen Content Standard or less than 2.0 percent oxygen by weight in a control area when supplied by a CAR using the Average Oxygen Content Standard.
- (3) No person may operate as, or claim to be a CAR or blender CAR unless that person is registered by the Department under OAR 340-252-0180. No CAR or blender CAR may offer for sale, store, sell or dispense gasoline to any person who is not registered as a CAR for use in a control area, unless:
  - (a) The oxygen content of the gasoline during the control period or averaging period meets the standard set in OAR 340-258-0140 or 340-258-0150, and OAR 340-258-0160, as applicable; and
  - (b) The gasoline contains at least:
    - (A) 2.7 percent oxygen by weight when the Per Gallon Oxygen Content Standard is used, except as required by OAR 340-258-0310;
    - (B) 2.0 percent oxygen by weight when the Average Oxygen Content Standard is used.
- (4) For a terminal that sells or dispenses gasoline intended for use in a control area during the control period, the terminal owner or operator may not accept gasoline into the terminal unless:
  - (a) Transfer documentation accompanies it containing information required by OAR 340-258-0220(3); and
  - (b) The terminal owner or operator conducts a quality assurance program to verify the accuracy of the information referred to in subsection (a) of this section.
- (5) No person may sell, store or dispense nonoxygenated gasoline in any control area during the control period unless:

- (a) The nonoxygenated gasoline is segregated from oxygenated gasoline;
  - (b) Clearly marked documents accompany the nonoxygenated gasoline marking it as “**nonoxygenated gasoline, not for sale to an ultimate consumer in a control area**”; and
  - (c) The nonoxygenated gasoline is in fact not sold or dispensed to ultimate consumers during the control period, in the control area.
- (6) No person subject to the requirements of OAR 340-258-0110 through 340-258-0310 may fail to comply with the requirements of OAR 340-258-0110 through 340-258-0310.
- (7) No person may sell, store, dispense, or transfer oxygenated gasoline, except for use by the ultimate consumer at a retail outlet or wholesale purchaser-consumer facility, without transfer documents that accurately contain the information required by OAR 340-2582-0220(3).
- (8) Any CAR, distributor or retail outlet that does not have a valid terminal permit may not market gasoline for use in a control area during the control period unless a prior owner of the gasoline has a valid terminal permit as required by OAR 340-258-0200.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

#### **340-258-0240 INSPECTION AND SAMPLING**

With consent of the owner or operator, the Department will, at any reasonable time, enter the premises of any person subject to the requirements of OAR 340-258-0110 through 340-258-0310 to determine compliance. The Department will inspect all relevant records and equipment, and will, in its discretion, purchase gasoline samples for testing by the Department.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

#### **340-258-0250 LIABILITY FOR VIOLATION OF A PROHIBITED ACTIVITY**

(1) Subject to OAR 340-258-0260, if gasoline contained in a storage tank at a facility owned, leased, operated, controlled or supervised by a retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer or oxygenate blender is found to be in violation of OAR 340-258-0230(1)(a) or (2), the following persons will be considered in violation:

- (a) The retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer or oxygenate blender who owns, leases, operates, controls or supervises the facility where the violation is found; and
- (b) Each oxygenate blender, distributor, reseller and carrier who, downstream of the control area terminal, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported or caused the transportation of gasoline that is in the storage tank containing gasoline found to be in violation.

(2) Subject to OAR 340-258-0260, if gasoline contained in a storage tank at a facility owned, leased, operated, controlled or supervised by a retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer or oxygenate blender is found to be in violation of OAR 340-258-0230(1)(b) or (2), the following persons will be considered in violation:

- (a) The retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer or oxygenate blender who owns, leases, operates, controls or supervises the facility where the violation is found; and

(b) Each refiner, importer, oxygenate blender, distributor, reseller and carrier who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported or caused the transportation of gasoline that is in the storage tank containing gasoline found to be in violation.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0260 DEFENSES FOR PROHIBITED ACTIVITIES**

- (1) A refiner, importer, oxygenate blender, distributor, reseller or carrier is considered to be in violation of OAR 340-258-0230(1) unless that person demonstrates that:
  - (a) The violation was not caused by the regulated person or that person's employee or agent;
  - (b) The person possesses documents that should accompany the gasoline, and that contain the information required by OAR 340-258-0220;
  - (c) The person conducts a quality assurance sampling and testing program as described in OAR 340-258-0280; and
- (2) A refiner, importer, oxygenate blender, distributor, reseller or carrier is considered to be in violation of OAR 340-258-0230(5) unless that person demonstrates that:
  - (a) The product is clearly labeled as **"blendstock/export/storage"** and the evidence supports this classification;
  - (b) The accompanying documents clearly state that the product does not comply with the oxygenated gasoline requirements;
  - (c) Some aspect of the product's quality supports the party's claim that the product was intended to be further blended before being sold, supplied, etc., as a finished product;
  - (d) The seller, supplier or transporter of the product has obtained a written certification or notice on shipping documents from the buyer/recipient of the product that the buyer/recipient understands that the product is not intended for sale or distribution as finished gasoline in a control area or until:
    - (A) It is blended to meet the oxygenated gasoline requirements of OAR 340-258-0110 through 340-258-0310; or
    - (B) The buyer/recipient receives equivalent certification from a subsequent buyer or obtains a written certification that the gasoline will not be sold or dispensed for use within a control area; and
  - (e) The party has no knowledge or reason to believe that the product will not be further blended to comply with the standards of OAR 340-258-0140 or 340-258-0150, and 340-258-0160 before being sold, supplied or transported as finished product, or that it would be sold or dispensed without further blending within a control area.
- (3) A retailer or wholesale purchaser-consumer is considered be in violation of OAR 340-258-0230(2) unless that person demonstrates that:
  - (a) The violation was not caused by the regulated person or that person's employee or agent;
  - (b) The person possesses documents that should accompany the gasoline, and that contain the information required by OAR 340-258-0220.
- (4) For purposes of this rule, the term "was caused" means that the person must demonstrate by a preponderance of the evidence through reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must

have been caused by another person.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340258-0270 INABILITY TO PRODUCE CONFORMING GASOLINE DUE TO EXTRAORDINARY CIRCUMSTANCES**

The Department will allow a person to distribute fuel which does not meet the oxygenated gasoline requirements of OAR 340-258-0110 through 340-258-0310 in appropriate extreme and unusual circumstances which are clearly outside the control of the blender CAR and which could not have been avoided by the exercise of prudence, diligence and due care if:

- (1) It is in the public interest to do so because distribution of the nonconforming fuel is necessary to meet projected shortfalls which cannot otherwise be compensated for;
- (2) The blender CAR exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity;
- (3) The blender CAR can show how the requirements for oxygenated gasoline will be expeditiously achieved; and
- (4) The blender CAR agrees to make up the air quality detriment associated with the nonconforming gasoline, where practicable.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0280 QUALITY ASSURANCE PROGRAM**

To demonstrate an acceptable quality assurance program under this rule, a person shall conduct periodic sampling and testing to determine if the oxygenated gasoline has oxygen content that is consistent with the product transfer documentation.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0290 ATTEST ENGAGEMENTS GUIDELINES WHEN PROHIBITED ACTIVITIES ALLEGED**

- (1) The Department will not require a CAR or blender CAR to submit attest engagement reports except as an optional defense for any alleged violations of OAR 340-258-0110 through 340-258-0310.
- (2) The attest engagement shall consist of performing the agreed-upon procedures set forth in the guidelines in accordance with the Association of Independent Certified Public Accountants' (AICPA's) statements on standards for Attestation Engagements and using statistical sample design parameters provided by EPA.
- (3) In performing the attest engagement, the CPA shall determine the sample size for each population according to parameters set out in **Table B**.

#### **TABLE B**

##### **Number in Population (N) — Sample Size**

66 or larger — 59

41 - 65 — 41

26 - 40 — 31

0 - 25 — N or 24, whichever is smaller

- (4) The number of populations from which samples should be drawn will vary depending on the circumstances. Sample items should be selected in such a way that the sample can be expected to be representative of the population.
- (5) If the CPA agrees to use some other form of sample selection and some other method to determine the sample size, that agreement should be summarized in the CPA's report.
- (6) The attest engagement shall be conducted by an independent Certified Public Accountant (CPA).
- (7) The CPA is required to comply with the general code of conduct and ethics as prescribed by the State of Oregon and by the AICPA.
- (8) The attest engagement shall include the following agreed-upon procedures, as appropriate, for the CAR's standardized reporting form(s):
  - (a) Read the report completed by management and filed with the Department;
  - (b) Obtain from the CAR an inventory reconciliation summarizing receipts and deliveries of all gasoline, gasoline blendstocks, and oxygenates for CARs serving a control area:
    - (A) Test mathematical accuracy of inventory reconciliation;
    - (B) Agree beginning and ending inventory amounts to company's perpetual inventory records;
    - (C) Agree deliveries into the control area to Department report, if applicable.
  - (c) Obtain listing of all gasoline, gasoline blendstocks, and oxygenate receipts during the period:
    - (A) Test mathematical accuracy of listing;
    - (B) Agree amounts to inventory reconciliation;
    - (C) Select a representative sample of individual receipts of gasoline, gasoline blendstocks, and oxygenates and trace details back to source documents.
  - (d) Obtain listing of all gasoline, gasoline blendstocks, and oxygenates sold or dispensed during the period:
    - (A) Test mathematical accuracy of listing;
    - (B) Agree amounts to inventory reconciliation report;
    - (C) Select a representative sample of individual batches sold or dispensed both into and outside the control area:
      - (i) Agree volumes for the sample items to original bill of lading or other source documents;
      - (ii) For sales or deliveries into the control area, determine that oxygenate content is at least two percent by examining bills of lading.
  - (e) Using the volume of oxygenated gasoline sold or dispensed into the control area from the inventory reconciliation report, recalculate the number of oxygen content units required by multiplying by 2.7 percent, except where otherwise specified in OAR340-258-0310, and agree to Department report;
  - (f) Recalculate the actual total oxygen credit units generated by adding the oxygen content of each batch or truck load of oxygenated gasoline that was sold or dispensed in the control area as determined in subsection (8)(e) of this rule multiplied by the actual oxygen content by weight associated with each batch or truck load;
  - (g) Recalculate the adjusted actual total oxygen credit units as follows:

- (A) The actual total oxygen credit units generated from subsection (8)(f) of this rule;
  - (B) Plus the total oxygen credit units purchased or acquired through trade; and
  - (C) Minus the total oxygen credit units sold or given away through trade.
- (h) The following steps apply to the testing of the actual total oxygen content from subsection (8)(f) of this rule and are applicable based on method of blending:
- (A) For CARs using rack- and truck-blending, recompute oxygen content by weight for a representative sample of deliveries based on detailed meter readings of gasoline, blendstocks and oxygenate receipts;
  - (B) For CARs using in-tank blending of gasoline, blendstocks and oxygenates, obtain register of running weighted oxygen content by tank and:
    - (i) Using the individual sample items from subsections (8)(c) and (d) of this rule test calculation of running totals;
    - (ii) Where laboratory analysis is used with the CARs weighted average calculation, select individual analysis reports of oxygenated gasoline receipts and deliveries during the period on a representative sample basis:
      - (I) Review laboratory results for consistency with CAR's calculations noting oxygen volume and specific gravity;
      - (II) Recalculate oxygen by weight;
      - (III) Agree information on lab reports to underlying delivery and receiving documentation.
    - (i) Obtain register of oxygen credit unit purchases and sales and select separate representative samples of individual purchased credits and individual sales credits:
      - (A) Agree selected credit unit transactions to the underlying contract and/or other supporting documentation noting specific volumes and oxygen content of the gasoline associated with the credits;
      - (B) Agree to the underlying contract and/or supporting documentation that the credits are generated in the same control areas as they are used. For example, no credits may be transferred between control areas;
      - (C) Agree to the underlying contract and/or supporting documentation that the credits are generated in the same averaging period as they are used;
      - (D) Agree to the underlying contract and/or supporting documentation that the ownership of credits is transferred only between CARs;
      - (E) Agree to the underlying contract and/or supporting documentation that the credit transfer agreement was made no later than 30 days after the final day of the averaging period in which the credits are generated.
    - (j) Prepare a report to client in accordance with the report provisions of Statements on Standards for Attestation Engagements indicating results of performing the above procedures.
- (9) The attestation report must be in compliance with the AICPA's Statement on Standards for Attestation Engagements.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0300 DISPENSER LABELING**

- (1) A person who sells or markets oxygenated gasoline at retail, or who otherwise

provides oxygenated gasoline for consumption by an ultimate consumer, shall place two labels on a dispenser used to dispense the gasoline to identify the oxygenate in the fuel, using the following criteria:

(a) The first label must include the following statement: **“The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles”**;

(b) The second label must contain the type of oxygenate(s) and the exact (plus or minus 0.5 percent) or maximum use concentration by volume. Only those oxygenates and concentrations listed below and any gasoline designated by EPA as substantially similar are allowed.

[NOTE: This applies only to the Department rules and dispenser is still responsible for complying with the disclosure requirements of ORS 646.915.]

(c) Lettering on the label must be legible and in block style of at least 20 point bold type;

(d) The lettering on the label shall be in a color contrasting to the intended background;

(e) The label must be placed on each side of the dispenser from which the gasoline can be dispensed and shall be on the upper one half of the dispenser, in a position that will be clear and conspicuous to the consumer.

- (2) A person who pursuant to OAR340-258-0110(7) dispenses nonoxygenated gasoline in a control area during the control period at a site where motor vehicles may have access must display a label in accordance to the standards above containing the following information: **“This fuel is not oxygenated to State of Oregon standards and may not be dispensed into motor vehicles”**.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-258-0310 CONTINGENCY PROVISION FOR CARBON MONOXIDE NONATTAINMENT AREAS**

- (1) Subsections (a), (b), (c) and (d) of this section apply to OAR 340-258-0100 through 340-258-0300:

(a) Upon determination by the Department, or written notification to the Department by the EPA Administrator that a carbon monoxide nonattainment area in a control area, as specified in OAR340-204-0090, fails to meet an applicable Clean Air Act deadline for attainment of the NAAQS for carbon monoxide, the following provisions shall become applicable in such control areas within eight months of written notification by the Department or the EPA Administrator, whichever is sooner:

(A) Oxygenates shall be supplied at maximum EPA approved oxygen content levels during the control period (e.g., 3.5percent for gasoline oxygenated with ethanol and 2.7 percent for gasoline oxygenated with MTBE);

(B) Compliance calculations shall be based on the per gallon oxygen content supplied by each CAR or blender CAR during the control period.

(b) At the end of each control period during which fuel meeting requirements of subsection (1)(a) of this rule is supplied, the Department will evaluate control area oxygenate mix information which is submitted by CARs and blender CARs in accordance with OAR 340-258-0220. If the Department projects, based on this data, that the average oxygen content of gasoline supplied in a control area will be

less than 3.1 percent in the next control season, the Department shall notify affected parties no later than March 1 and the following additional requirements shall become effective in subsequent control periods:

- (A) The average oxygen content standard of gasoline for CARs or blender CARs using the Average Oxygen Content Standard Compliance Option, shall be increased to a minimum of 2.9 percent;
  - (B) The oxygen content standard of gasoline for CARs and blender CARs using the Per Gallon Oxygen Content Standard Compliance Option, shall be increased to a minimum of 2.9 percent;
  - (C) Compliance calculations and the calculation of oxygen credit units, where applicable, shall be based on an oxygen content of 2.9 percent.
- (c) Federal standards for percent by volume oxygenate content may not be exceeded and shall not be affected by any requirement under section (1) of this rule;
- (d) This rule shall be applicable during the control period specified in OAR 340-258-0110(2).

**NOTE:** OARs affected by this provision include: OAR 340-258-0010, 340-258-0140(1) and (2); 340-258-0150(1) and (3)(a)(B), 340-258-0160(1)(a) and (2)(a), 340-258-0220, 340-258-0230(3)(b)(A), and 340-258-0290(8)(e).

- (2) The Department may propose to the Environmental Quality Commission the adoption of an equivalent alternative program to achieve necessary carbon monoxide emission reductions as a substitute for measures outlined in subsection (1)(a) of this rule. An alternative carbon monoxide contingency plan which is adopted by the Commission shall not become effective until approved by the EPA as a SIP revision.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

## **STANDARD FOR AUTOMOTIVE GASOLINE**

### **340-258-0400 REID VAPOR PRESSURE FOR GASOLINE**

- (1) No person shall sell or supply as a fuel for motor vehicles any gasoline which does not comply with the requirements of 40 CFR 80.
- (2) The Reid Vapor Pressure of gasoline sold or supplied, by bulk gasoline terminals and gasoline refiners, as fuel for motor vehicles shall be measured according to the procedures established in the most current method of **ASTM D323**:
- (a) The geographic coverage of this section shall be consistent with boundary specified in **ASTM D439**, specifically all of Oregon, west of 122 degrees Longitude;
  - (b) Test results from samples submitted to the Department by refiners or distributors of gasoline shall be sampled and tested pursuant to methods established by the most current method of **ASTM D323**. Analysis of all fuel from pipeline, tanker, or other sources outside of the state shall be summarized and forwarded to the Department on a monthly basis. Such reports will be supplied on a form supplied by the Department;
  - (c) The Department reserves the right to audit records and to sample gasoline for the purposes of compliance. Samples of petroleum shall be sampled pursuant and tested by methods established by the most current method of **ASTM D323** or by

methods established under the California Air Resources rule, **Title 13, §2251** or **Part 80 of Title 40** of the **Code of Federal Regulations — Fuel and Fuel Additives**.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

## **DIVISION 262**

### **RESIDENTIAL WOODHEATING**

#### **340-262-0010 PURPOSE**

The purpose of this Division is to establish rules to control, reduce and prevent air pollution caused by residential woodheating emissions.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

#### **340-262-0020 DEFINITIONS**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

- (1) “Administrator” means the administrator of the Environmental Protection Agency or the administrator’s authorized representative.
- (2) “Antique Woodstove” means a woodstove built before 1940 that has an ornate construction and a current market value substantially higher than a common woodstove manufactured in the same time period.
- (3) “Commission” means the Environmental Quality Commission.
- (4) “Consumer” means any person who buys a woodstove for personal use.
- (5) “Cookstove” means an indoor woodburning appliance the design and primary purpose of which is to cook food.
- (6) “Curtailement” means a period during which woodburning is prohibited due to the existence of an air stagnation condition.
- (7) “Dealer” means any person engaged in selling wood-stoves to retailers or other dealers for resale. A dealer which is also an Oregon retailer shall be considered to be only a retailer for purposes of this Division.
- (8) “Destroy” means to demolish to such an extent that restoration is impossible.
- (9) “Department” means the Oregon Department of Environmental Quality.
- (10) “Director” means the Director of the Department or the Director’s authorized delegates.
- (11) “EPA” means the United States Environmental Protection Agency.
- (12) “Federal Regulations” means **Volume 40 CFR, Part 60, Subpart AAA, Sections 60.530 through 60.539b, dated July 1, 1993**.
- (13) “Fireplace” means a framed opening made in a chimney to hold an open fire.
- (14) “Manufacturer” means any person who imports a woodstove, constructs a woodstove or parts for woodstoves.
- (15) “New Woodstove” means any woodstove that has not been sold, bargained, exchanged, given away or has not had its ownership transferred from the person who first acquired the woodstove from the manufacturer’s dealer or agency, and has not

been so used to have become what is commonly known as “second hand” within the ordinary meaning of that term.

- (16) “Pelletstove” means a woodburning heating appliance which uses wood pellets as its primary source of fuel.
- (17) “Retailer” means any person engaged in the sale of woodstoves directly to consumers.
- (18) “Used Woodstove” means any woodstove that has been sold bargained, exchanged, given away, or has had its ownership transferred from a retailer, manufacturer’s dealer or agent to a consumer.
- (19) “Woodstove” or “Woodheater” means an enclosed, woodburning appliance capable of and intended for space heating and domestic water heating that meets all of the following criteria:
  - (a) An air-to-fuel ratio in the combustion chamber averaging less than 35-to-1 as determined by the test procedure prescribed in federal regulations, **40 CFR, Part 60, Subpart AAA, §60.534** performed at an accredited laboratory;
  - (b) A usable firebox volume of less than 20 cubic feet;
  - (c) A minimum burn rate less than 5 kg/hr as determined by the test procedure prescribed in federal regulations, **40 CFR, Part 60, Subpart AAA, §60.534** performed at an accredited laboratory; and
  - (d) A maximum weight of 800 kg. In determining the weight of an appliance for these purposes, fixtures and devices that are normally sold separately, such as flue pipe, chimney, heat distribution ducting, and masonry components that are not an integral part of the appliance or heat distribution ducting, shall not be included.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

## **WOODSTOVE SALES**

### **340-262-0030 REQUIREMENTS FOR SALE OF WOODSTOVES**

- (1) Requirements applicable to the sale of new woodstoves:
  - (a) No person shall advertise to sell, offer to sell, or sell a new woodstove in Oregon unless the woodstove has been labeled for heating efficiency and tested, certified and labeled for emission performance in accordance with criteria, emission standards, and procedures specified in the federal regulations, **40 CFR, Part 60, Subpart AAA;**
  - (b) No manufacturer, dealer, retailer or individual shall alter the permanent certification label in any way from the label approved by the Administrator pursuant to federal regulations, **40 CFR, Part 60, Subpart AAA;**
  - (c) No manufacturer, dealer or retailer shall alter the removable label in any way from the label approved by the Administrator pursuant to federal regulations, **40 CFR, Part 60, Subpart AAA.**
- (2) Requirements applicable for the sale of used woodstoves. A person shall not advertise to sell, offer to sell, or sell a used woodstove unless:
  - (a) The woodstove was certified by the Department or the Administrator on or after July 1, 1986, in accordance with emission performance and heating efficiency criteria applicable at the time of certification;
  - (b) The woodstove has permanently attached an emission performance label authorized by the Department or the EPA.
- (3) Section (2) of this rule concerning used woodstoves that have not been certified shall

not apply to the following:

- (a) The selling by a consumer of a used woodstove that has not been certified by the Department to a person in the business of reusing, reclaiming or recycling scrap metal to be destroyed or used as scrap metal;
- (b) The remittance of a used woodstove that has not been certified by the Department by a consumer to a retailer for the purpose of receiving a reduction in price on a new residential heating system.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-262-0040 EXEMPTIONS**

- (1) A pelletstove is exempt from the following requirements:
  - (a) OAR 340-262-0110 through 340-262-0130, woodstove certification, and OAR 340-262-0030, requirements applicable to the sale of woodstoves;
  - (b) OAR 340-262-0030(2), requirements applicable to the sale of used woodstoves;
  - (c) OAR 340-262-0200 through 340-262-0250, woodburning curtailment; and
  - (d) OAR 340-262-0300 through 340-262-0330, woodstove requirements.
- (2) An enclosed woodheating appliance capable of and intended for residential space heating or domestic water heating is exempt from OAR 340-262-0030, requirements applicable to the sale of woodstoves, and OAR 340-262-0110 through 340-262-0130, woodstove certification, provided the manufacturer holds a valid letter of exemption from the Administrator which verifies that the appliance is not a woodstove or woodheater as defined in OAR 340-262-0020(19).
- (3) An antique stove is exempt from the requirements of:
  - (a) OAR 340-262-0030(2), requirements applicable to the sale of used woodstoves; and
  - (b) OAR 340-262-0300 through 340-262-0330, woodstove requirements.
- (4) A cookstove is exempt from the requirements of OAR Chapter 340, Division 262, except for OAR 340-262-0200 through 340-262-0250, woodburning curtailment.
- (5) A woodburning fireplace, woodstove or appliance operated within a household classified to be at less than or equal to 125 percent of the federal poverty level is exempt from the requirement of OAR 340-262-0200 through 340-262-0250, woodburning curtailment. The federal poverty level is published in the **Federal Register, Volume 56, Number 34, February 20, 1990, page 6859**, Department of Health and Human Services.
- (6) A woodstove operated in a residence that is equipped solely with woodheat is exempt from the requirements of OAR 340-262-0200 through 340-262-0250, woodburning curtailment.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **WOODSTOVE CERTIFICATION PROGRAM**

#### **340-262-0100 APPLICABILITY**

- (1) OAR 340-262-0100 through 340-262-0130 shall apply to any woodstove or woodheater.
- (2) The following woodheating appliances are not subject to OAR 340-262-0100 through

340-262-0130:

- (a) Open masonry fireplaces;
- (b) Boilers;
- (c) Furnaces; and
- (d) Cookstoves.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-262-0110 EMISSIONS PERFORMANCE STANDARDS AND CERTIFICATION**

- (1) Unless exempted by the Department under OAR 340-262-0040, new woodstoves advertised for sale, offered for sale or sold in Oregon between July 1, 1990 and June 30, 1992 shall be certified by the Administrator pursuant to federal regulation as complying with the particulate matter emission limits specified in the federal regulations, **40 CFR, Part 60, Subpart AAA, §60.532(a)**.
- (2) Unless exempted by the Department under OAR 340-262-0040, new woodstoves advertised for sale, offered for sale, or sold in Oregon on or after July 1, 1992 shall be certified by the Administrator pursuant to federal regulation as complying with the particulate matter emission limits specified in the federal regulations, **40 CFR, Part 40, Subpart AAA, §60.532(b)**.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-262-0120 GENERAL CERTIFICATION PROCEDURES**

Any new woodstove sold in Oregon shall be considered to be in full compliance with Oregon emission performance standards and rated heating efficiency requirements if the manufacturer holds a valid Certificate of Compliance issued by the Administrator, pursuant to federal regulations, **40 CFR, Part 60, Subpart AAA**. Such a stove shall be considered Oregon certified without any further action by the Department.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-262-0130 LABELING REQUIREMENTS**

New woodstoves sold in Oregon shall have affixed to them:

- (1) A permanent label, in accordance with federal regulations, **40 CFR, Part 60, Subpart AAA, §60.536**.
- (2) A point-of-sale removable label in accordance with federal regulations, **40 CFR, Part 60, Subpart AAA, §60.536**.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

## **WOODBURNING CURTAILMENT**

### **340-262-0200 APPLICABILITY**

OAR 340-262-0200 through 340-262-0250 shall apply to any portion of the state:

- (1) Where the Department has determined that, under the requirements of the Clean Air Act, an enforceable woodburning curtailment program is required as an emission reduction control strategy for a PM<sub>10</sub> nonattainment area and the Department has determined that the local government or regional authority has failed to adopt or

adequately implement the required woodburning curtailment program. In determining whether a local government or regional authority has failed to adequately adopt or implement a curtailment program, the Department shall determine if a local government or regional authority:

- (a) Has adopted an ordinance that requires the curtailment of residential woodheating at forecasted air pollution levels which are consistent with the curtailment conditions and requirements specified in OAR 340-262-0210(1) and 340-262-0220(1) and (2);
  - (b) Is issuing on a daily basis curtailment advisories to the public consistent with OAR 340-262-0230; and
  - (c) Is conducting surveillance for compliance and is taking adequate enforcement actions consistent with OAR 340-262-0240.
- (2) Where the Department has determined that, under the requirements of the Clean Air Act, an enforceable woodburning curtailment program is required as an emission abatement strategy to respond to an air pollution emergency.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-262-0210 DETERMINATION OF AIR STAGNATION CONDITIONS**

The Department shall utilize appropriate data and technology to develop methodology criteria for a curtailment program that:

- (1) For use as an emission reduction control strategy or contingency plan for PM<sub>10</sub> nonattainment areas:
  - (a) Calls a Stage I advisory when the PM<sub>10</sub> standard is being approached; and
  - (b) Calls a Stage II advisory, when an exceedance of the PM<sub>10</sub> standard is forecasted to be imminent.
- (2) For use as an emission abatement strategy in order to respond to an air pollution emergency:
  - (a) Calls an Alert when PM<sub>10</sub> alert levels have been reached and are forecasted to continued; and
  - (b) Calls a Warning when PM<sub>10</sub> warning levels have been reached and are forecasted to continue;
  - (c) Alert and Warning levels are specified in OAR Chapter 340, Division 206.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-262-0220 PROHIBITION ON WOODBURNING DURING PERIODS OF AIR STAGNATION**

- (1) During any designated Stage I advisory, the operation of any uncertified woodstove, fireplace, or woodburning appliance shall be prohibited unless exempted under the provisions of OAR 340-262-0040.
- (2) During any designated Stage II advisory, the operation of any woodstove, fireplace, or woodburning appliance shall be prohibited unless exempted under the provisions of OAR 340-262-0040.
- (3) During any designated PM<sub>10</sub> Alert, the operation of any uncertified woodstove, fireplace, or woodburning appliance shall be prohibited unless exempted under the provisions of OAR 340-262-0040.
- (4) During any designated PM<sub>10</sub> Warning, the operation of any woodstove, fireplace, or

woodburning appliance shall be prohibited unless exempted under the provisions of OAR 340-262-0040.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-262-0230 PUBLIC INFORMATION PROGRAM**

The Department or its designated representative shall implement a public information program to disseminate the daily air pollution advisory to the local community. The public information program shall include but may not be limited to the utilization of applicable local media including television, radio, and newspapers.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-262-0240 ENFORCEMENT**

- (1) The Department or its designated representative shall monitor the level of compliance with curtailment requirements during designated periods of air stagnation.
- (2) A rebuttable presumption of a violation shall arise if smoke is being emitted through a flue or chimney during a curtailment period unless the household from which smoke is being emitted has provided the Department or designated representative with information indicating that the household or its woodburning appliance is exempt from curtailment requirements in accordance with OAR340-262-0040.
- (3) Any person claiming an exemption to OAR 340-262-0200 through 340-262-0250 in accordance with OAR340-262-0040 in response to a Notice of Noncompliance shall provide the Department with documentation which establishes eligibility for the exemption. The Department shall review the documentation and make a determination regarding the exemption status of the household, or woodheating appliance. The following documentation shall be submitted to the Department for review in order to establish exemption status under the criteria of OAR 340-262-0040:
  - (a) For households desiring low income exemption status a copy of the previous year tax returns. The tax return should reflect the total combined household income for the past year;
  - (b) A signed affidavit attesting to the sole source status of a home (see note);
  - (c) A signed affidavit attesting to the certification status of the home heating appliance (see note).

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-262-0250 SUSPENSION OF DEPARTMENT PROGRAM**

- (1) The Department shall suspend the operation and enforcement of OAR340-262-0200 through 340-262-0240 in any area upon determination by the Department that the local government or regional air quality authority has adopted and is adequately implementing a woodburning curtailment program that is at least as stringent as the program outlined in OAR 340-262-0200 through 340-262-0240.
- (2) In making a determination concerning the adequacy of a local or regional woodburning curtailment program, the Department shall consider whether or not the local government or regional authority:
  - (a) Has adopted an ordinance that requires the curtailment of residential

- woodheating at forecasted air pollution levels which are consistent with curtailment conditions specified in OAR 340-262-0210;
- (b) Is issuing curtailment advisories to the public on a daily basis;
  - (c) Is conducting surveillance for compliance and is taking adequate enforcement actions;
  - (d) Any other information the Department determines is necessary to determine the adequacy of the curtailment program.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

## **WOODSTOVE REMOVAL CONTINGENCY PROGRAM**

### **340-262-0300 APPLICABILITY**

OAR340-262-0300 though 340-262-0330 shall apply to any area classified as a nonattainment area for PM<sub>10</sub> that does not achieve attainment by the applicable Clean Air Act deadline.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-262-0310 REMOVAL AND DESTRUCTION OF UNCERTIFIED STOVE UPON SALE OF HOME**

Except as provided for by OAR 340-262-0040, any uncertified woodstove shall be removed and destroyed by the seller upon the sale of a home.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-262-0320 HOME SELLER'S RESPONSIBILITY TO VERIFY STOVE DESTRUCTION**

Any person selling a home which contains an uncertified woodstove shall provide to the Department or the Department's designated representative prior to the sale of the home, a copy of a receipt from a scrap metal dealer verifying that the stove has been destroyed.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-262-0330 HOME SELLER'S RESPONSIBILITY TO DISCLOSE**

Any person selling a home in which an uncertified woodstove is present shall disclose to any potential buyer, buyer's agent or buyer's representative that the woodstove is uncertified, and must be removed and destroyed upon sale of the home.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

## **DIVISION 266**

### **FIELD BURNING RULES (Willamette Valley)**

#### **340-266-0010 INTRODUCTION**

- (1) This Division applies to the open field burning, propane flaming, and stack and pile

burning of all perennial and annual grass seed and cereal grain crops, and associated residue within the Willamette Valley. The open burning of all other agricultural waste material, including sanitizing perennial and annual grass seed crops by open burning in counties outside the Willamette Valley, (referred to as “fourth priority agricultural burning”) is governed by OAR Chapter 340, Division 264, Rules for Open Burning. Enforcement procedure and civil penalties for open field burning, propane flaming, and stack and pile burning are established in OAR Chapter 340, Division 12.

(2) Organization of rules:

- (a) OAR 340-266-0020 is the policy statement of the Environmental Quality Commission setting forth the goals of this Division;
- (b) OAR 340-266-0030 contains definitions of terms which have specialized meanings within the context of this Division;
- (c) OAR 340-266-0040 lists general provisions and requirements pertaining to all open field burning, propane flaming, and stack and pile burning with particular emphasis on the duties and responsibilities of the grower registrant;
- (d) OAR 340-266-0050 lists procedures and requirements for registration of acreage, issuance of permits, collection of fees, and keeping of records, with particular emphasis on the duties and responsibilities of the local permit issuing agencies;
- (e) OAR 340-266-0060 establishes acreage limits and methods of determining acreage allocations;
- (f) OAR 340-266-0070 establishes criteria for authorization of open field burning, propane flaming, and stack and pile burning pursuant to the administration of a daily smoke management control program;
- (g) OAR 340-266-0080 establishes special provisions pertaining to field burning by public agencies for official purposes, such as “training fires”;
- (h) OAR 340-266-0090 establishes special provisions pertaining to “preparatory burning”;
- (i) OAR 340-266-0100 establishes special provisions pertaining to open field burning for experimental purposes;
- (j) OAR 340-166-0110 establishes special provisions and procedures pertaining to emergency cessation of burning;
- (k) OAR 340-266-0120 establishes provisions pertaining to propane flaming;
- (l) OAR 340-266-0130 establishes provisions pertaining to “stack and piling burning”.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-266-0020 POLICY**

In the interest of public health and welfare, it is the declared public policy of the State of Oregon to reduce the practice of open field burning while developing and providing alternative methods of field sanitation and alternative methods of utilizing and marketing grass seed and cereal grain straw residues and to control, reduce, and prevent air pollution from open field burning, propane flaming, and stack and pile burning by smoke management. In developing and carrying out a smoke management control program it is the policy of the Environmental Quality Commission:

- (1) To provide for a maximum level of burning with a minimum level of smoke impact on the public, recognizing:

- (a) The importance of flexibility and judgment in the daily decision-making process, within established and necessary limits;
  - (b) The need for operational efficiency within and between each organizational level;
  - (c) The need for effective compliance with all regulations and restrictions.
- (2) To study, develop and encourage the use of reasonable and economically feasible alternatives to the practice of open field burning.
- (3) To increase the degree of public safety by preventing unwanted wild fires and smoke from open field burning, propane flaming, and stack burning near highways and freeways within the State of Oregon. The Environmental Quality Commission hereby adopts by reference, as rules of the Environmental Quality Commission, OAR 837-110-0110 through 837-110-0160, the rules of the State Fire Marshal filed with the Secretary of State on February 7, 1994. These rules shall apply to that area west of the Cascade Range and south to the Douglas/Lane County lines.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-266-0030 DEFINITIONS**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

- (1) “Actively Extinguish” means the direct application of water or other fire retardant to an open field fire.
- (2) “Approved Alternative Method(s)” means any method approved by the Department to be a satisfactory alternative field sanitation method to open field burning.
- (3) “Approved Alternative Facilities” means any land, structure, building, installation, excavation, machinery, equipment, or device approved by the Department for use in conjunction with an approved alternative method.
- (4) “Candidate Fields” means all grass seed or cereal grain fields being considered for open field burning or propane flaming.
- (5) “Commission” means the Environmental Quality Commission.
- (6) “Cumulative Hours of Smoke Intrusion in the Eugene-Springfield Area” means the average of the totals of cumulative hours of smoke intrusion recorded for the Eugene site and the Springfield site. Provided the Department determines that field burning was a significant contributor to the smoke intrusion:
  - (a) The Department shall record one hour of intrusion for each hour the nephelometer hourly reading exceeds a background level by  $1.8 \times 10^4$  b-scat units or more but less than the applicable value in subsection (b) or (c) of this section;
  - (b) Between June 16 and September 14 of each year, two hours of smoke intrusion shall be recorded for each hour the nephelometer hourly reading exceeds a background level by  $5.0 \times 10^4$  b-scat units;
  - (c) Between September 15 and June 15 of each year, two hours of intrusion shall be recorded for each hour the nephelometer hourly reading exceeds a background level by  $4.0 \times 10^4$  b-scat units;
  - (d) The background level shall be the average of the three hourly readings immediately prior to the intrusion.
- (7) “Department” means the Department of Environmental Quality. The Department may enter into contracts with the Oregon Department of Agriculture or other agencies to carry out the purposes set forth in these rules.

- (8) “Director” means the Director of the Department or delegated employee representative pursuant to ORS 468.045(3).
- (9) “District Allocation” means the total amount of acreage sub-allocated annually to the fire district, based on the district’s pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued within the district, subject to daily authorization. District allocation is defined by the following identity:

District Allocation =

$$\frac{\text{Maximum annual acreage limit}}{\text{(Total acreage registered in the District)}} \div \text{Total acreage registered in the Valley}$$

(10) “Drying Day” means a 24-hour period during which the relative humidity reached a minimum less than 50 percent and no rainfall was recorded at the nearest reliable measuring site.

(11) “Effective Mixing Height” means either the actual height of plume rise as determined by aircraft measurement or the calculated or estimated mixing height as determined by the Department, whichever is greater.

(12) “Field-by-Field Burning” means burning on a limited or restricted basis in which the amount, rate, and area authorized for burning is closely controlled and monitored. Included under this definition are “training fires” and experimental open field burning.

(13) “Field Reference Code” means a unique four-part code which identifies a particular registered field for mapping purposes. The first part of the code shall indicate the grower registration (form) number, the second part the line number of the field as listed on the registration form, the third part the crop type, and the fourth part the size (acreage) of the field (e.g., a 35 acre perennial (bluegrass) field registered on Line 2 of registration form number 1953 would be 1953-2-P-BL-35).

(14) “Fire District” or “District” means a fire permit issuing agency.

(15) “Fire Permit” means a permit issued by a local fire permit issuing agency pursuant to ORS 477.515, 477.530, 476.380, or 478.960.

(16) “Fires-Out Time” means the time announced by the Department when all flames and major smoke sources associated with open field burning should be out and prohibition conditions are scheduled to be imposed.

(17) “Fire Safety Buffer Zone” shall have the same meaning as defined in the State Fire Marshal rules.

(18) “Fluffing” means an approved mechanical method of stirring or tedding crop residues for enhanced aeration and drying of the full fuel load, thereby improving the field’s combustion characteristics.

(19) “Grower Allocation” means the amount of acreage sub-allocated annually to the grower registrant, based on the grower registrant’s pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued, subject to daily authorization. Grower allocation is defined by the following identity:

Grower Allocation =

$$\text{Maximum annual acreage limit}$$

Total acreage registered in the Valley

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Total acreage registered by the grower registrant

- (20) “Grower Registrant” means any person who registers acreage with the Department for purposes of open field burning, propane flaming, or receives a permit to stack or pile burn.
- (21) “Marginal Conditions” means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety.
- (22) “Marginal Day” means a day on which marginal conditions exist.
- (23) “Nephelometer” means an instrument for measuring ambient smoke concentrations.
- (24) “Northerly Winds” means winds coming from directions from 290° to 90° in the north part of the compass, averaged through the effective mixing height.
- (25) “Open Field Burning” means burning of any perennial or annual grass seed or cereal grain crop, or associated residue, in such manner that combustion air and combustion products are not effectively controlled.
- (26) “Open Burning” means the burning of agricultural, construction, demolition, domestic, or commercial waste or any other burning which occurs in such a manner that combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney pursuant to OAR 340-264-0030.
- (27) “Open Field Burning Permit” means a permit issued by the Department pursuant to ORS 468A.575.
- (28) “Permit Issuing Agency” or “Permit Agent” means the county court or board of county commissioners, or fire chief or a rural fire protection district or other person authorized to issue fire permits pursuant to ORS 477.515, 477.530, 476.380, or 478.960.
- (29) “Preparatory Burning” means controlled burning of portions of selected problem fields for the specific purpose of reducing the fire hazard potential or other conditions which would otherwise inhibit rapid ignition burning when the field is subsequently open burned.
- (30) “Priority Acreage” means acreage located within a priority area.
- (31) “Priority Areas” means the following areas of the Willamette Valley:
  - (a) Areas in or within three miles of the city limits of incorporated cities having populations of 10,000 or greater;
  - (b) Areas within one mile of airports servicing regularly scheduled airline flights;
  - (c) Areas in Lane County south of the line formed by U.S. Highway 126 and Oregon Highway 126;
  - (d) Areas in or within three miles of the city limits of the City of Lebanon;
  - (e) Areas on the west and east side of and within 1/4 mile of these highways: 99, 99E, and 99W. Areas on the south and north side of and within 1/4 mile of U.S. Highway 20 between Albany and Lebanon, Oregon Highway 34 between Lebanon and Corvallis, Oregon Highway 228 from its junction south of Brownsville to its rail crossing at the community of Tulsa.
- (32) “Prohibition Conditions” means conditions under which open field burning is not allowed except for individual burns specifically authorized by the Department

pursuant to OAR 340-266-0070(2).

- (33) "Propane Flaming" means a mobile flamer device which meets the following design specifications and utilizes an auxiliary fuel such that combustion is nearly complete and emissions are significantly reduced:
  - (a) Flamer nozzles shall not be more than 15 inches apart;
  - (b) A heat deflecting hood is required and shall extend a minimum of three feet beyond the last row of nozzles.
- (34) "Propane Flaming Permit" means a permit issued by the Department pursuant to ORS 468A.575 and consisting of a validation number and specifying the conditions and acreage specifically registered and allocated for propane flaming.
- (35) "Quota" means an amount of acreage established by the Department for each fire district for use in authorizing daily burning limits in a manner to provide, as reasonably as practicable, an equitable opportunity for burning in each area.
- (36) "Rapid Ignition Techniques" means a method of burning in which all sides of the field are ignited as rapidly as practicable in order to maximize plume rise. Little or no preparatory backfire burning shall be done.
- (37) "Released Allocation" means that part of a growers allocation, by registration form, that is unused and voluntarily released to the Department for first come-first serve dispersal to other grower registrants.
- (38) "Residue" means straw, stubble and associated crop material generated in the production of grass seed and cereal grain crops.
- (39) "Responsible Person" means each person who is in ownership, control, or custody of the real property on which open burning occurs, including any tenant thereof, or who is in ownership, control or custody of the material which is burned, or the grower registrant. Each person who causes or allows open field burning, propane flaming, or stack or pile burning to be maintained shall also be considered a responsible person.
- (40) "Small-Seeded Seed Crops Requiring Flame Sanitation" means small-seeded grass, legume, and vegetable crops, or other types approved by the Department, which are planted in early autumn, are grown specifically for seed production, and which require flame sanitation for proper cultivation. For purposes of this Division, clover and sugar beets are specifically included. Cereal grains, hairy vetch, or field peas are specifically not included.
- (41) "Smoke Management" means a system for the daily or hourly control of open field burning, propane flaming, or stack or pile burning through authorization of the times, locations, amounts and other restrictions on burning, so as to provide for suitable atmospheric dispersion of smoke particulate and to minimize impact on the public.
- (42) "Southerly Winds" means winds coming from directions from 90° to 290° in the south part of the compass, averaged through the effective mixing height.
- (43) "Stack Burning" means the open burning of bound, baled, collected, gathered, accumulated, piled or stacked straw residue from perennial or annual grass seed or cereal grain crops.
- (44) "Stack Burning Permit" means a permit issued by the Department pursuant to ORS468A.575 that identifies the responsible person, date of permit issuance, and specifies the acreage and location authorized for stack or pile burning.
- (45) "Test Fires" means individual field burns specifically authorized by the Department for the purpose of determining or monitoring atmospheric dispersion conditions.
- (46) "Training Fires" means individual field burns set by or for a public agency for the

official purpose of training personnel in fire-fighting techniques.

- (47) “Unusually High Evaporative Weather Conditions” means a combination of meteorological conditions following periods of rain which result in sufficiently high rates of evaporation, as determined by the Department, where fuel (residue) moisture content would be expected to approach about 12 percent or less.
- (48) “Validation Number” means:
- (a) For open field burning a unique five-part number issued by the Department or its delegate identifying a specific field and acreage allowed to be open field burned and the date and time the permit was issued (e.g., a validation number issued August 26 at 2:30 p.m. for a 70-acre burn for a field registered on Line 2 of registration form number 1953 would be 1953-2-0826-1430-070);
  - (b) For propane flaming and stack or pile burning a unique five part alphanumeric, issued by the Department or its delegate, identifying a specific field and acreage allowed to be propane flamed or stack or pile burned, the date and time the permit was issued, and the burn type (e.g., a validation number issued on July 15 for a 100 acre field to be propane flamed registered on Line 4 of registration form 9999 would be 9999-4-0715-P-100).
- (49) “Ventilation Index (VI)” means a calculated value used as a criterion of atmospheric ventilation capabilities. The Ventilation Index as used in this Division is defined by the following identity:

VI =

Effective mixing height (feet)

1,000

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Average wind speed through the effective mixing height (knots)

- (50) “Willamette Valley” means the areas of Benton, Clackamas, Lane, Linn, Marion, Mult-nomah, Polk, Washington, and Yamhill Counties lying between the crest of the Coast Range and the crest of the Cascade Mountains, and includes the following:
- (a) “South Valley”, the areas of jurisdiction of all fire permit issuing agents or agencies in the Willamette Valley portions of the counties of Benton, Lane, or Linn;
  - (b) “North Valley”, the areas of jurisdiction of all other fire permit issuing agents or agencies in the Willamette Valley.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-266-0040 GENERAL REQUIREMENTS**

- (1) No person shall cause or allow open field burning or propane flaming on any acreage unless said acreage has first been registered and mapped pursuant to OAR 340-266-0050(1), the registration fee has been paid, and the registration (permit application) has been approved by the Department.
- (2) No person shall cause or allow open field burning, propane flaming, or stack or pile burning without first obtaining and being able to readily demonstrate a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 340-266-0050(2). On the specific day of and prior to open the field burning, propane flaming, or pile or stack burning of any grass seed or cereal grain crop or associated residue the grower registrant shall obtain, in person or by telephone, a valid burning

permit and fire permit from the appropriate permit issuing agent pursuant to OAR 340-266-0050.

- (3) The Department may prohibit any person from registering acreage for open field burning or propane flaming and may deny burn permits for open field burning, propane flaming, and stack and pile burning until all delinquent registration fees, late fees, and burn permit fees from previous seasons are paid. The Department may also institute appropriate legal action to collect the delinquent fees.
- (4) No person shall open field burn cereal grain acreage unless that person first issues to the Department a signed statement, and then acts to insure, that said acreage will be planted in the following growing season to a small-seeded seed crop requiring flame sanitation for proper cultivation, as defined in OAR 340-266-0030(40).
- (5) No person shall cause or allow open field burning, propane flaming, or stack or pile burning which is contrary to the Department's announced burning schedule specifying the times, locations and amounts of burning permitted, or to any other provision announced or set forth by the Department or this Division.
- (6) Each responsible person open field burning or propane flaming shall have an operating radio receiver and shall directly monitor the Department's burn schedule announcements at all times while open field burning or propane flaming.
- (7) Each responsible person open field burning or propane flaming shall actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employee of the Department.
- (8) No person shall cause or allow open field burning or stack or pile burning within 1/4 mile of either side of any Interstate freeway within the Willamette Valley or within 1/8 mile of either side of the designated roadways listed in OAR 837-110-0080(2)(c). In addition, no person shall cause or allow open field burning in any of the remaining area within a fire safety buffer zone unless a noncombustible ground surface has been provided between the field to be burned and the nearest edge of the roadway right-of-way as required by OAR 837-110-0080.
- (9) Each responsible person open field burning, propane flaming, or stack or pile burning within a priority area or fire safety buffer zone around a designated city, airport or highway shall refrain from burning and promptly extinguish any burning if it is likely that the resulting smoke would noticeably affect the designated city, airport or highway.
- (10) Each responsible person open field burning shall make every reasonable effort to expedite and promote efficient burning and prevent excessive emissions of smoke by:
  - (a) Meeting all of the State Fire Marshal requirements specified in OAR 837-110-0040 through 837-110-0080;
  - (b) Ensuring field residues are evenly distributed, dry, and in good burning condition;
  - (c) Employing rapid ignition techniques on all acreage where there are no imminent fire hazards or public safety concerns.
- (11) Open field burning, propane flaming, or stack or pile burning in compliance with this Division does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable law, ordinance, regulation, rule, permit, order or decree of the Commission or any other government entity having jurisdiction.
- (12) Any revisions to the maximum acreage to be burned, allocation or permit issuing

procedures, or any other substantive changes to this Division affecting open field burning, propane flaming, or stack or pile burning for any year shall be made prior to June 1 of that year. In making such changes, the Commission shall consult with Oregon State University.

- (13) Open field burning shall be regulated in a manner consistent with the requirements of the Oregon Visibility Protection Plan for Class I Areas (Section 5.2 of the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-200-0040).

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-266-0050 REGISTRATION, PERMITS, FEES, RECORDS**

In administering a field burning smoke management program, the Department may contract with counties or fire districts or other responsible individual to administer registration of acreage, issuance of permits, collection of fees, and keeping of records for open field burning, propane flaming, or stack or pile burning within their permit jurisdictions. The Department shall pay said authority for these services in accordance with the payment schedule provided for in ORS 468A.615. Three-quarters of said payment shall be made prior to July 1 of each year and the remainder shall be paid within ten days after completion of the end of season reconciliation:

- (1) Registration of acreage:

(a) On or before April 1 of each year, each grower intending to open burn or propane flame under this Division shall register the total acreage to be open burned or propane flamed. Said acreage shall be registered with the Department or its authorized permit agent on the registration forms provided. Candidate fields for open burning or propane flaming shall be listed on the registration form and shall also be delineated on specially provided registration map materials and identified using a unique field reference code. Registration, listing of fields, and mapping shall be completed according to the established procedures of the Department. At the time of registration, a non-refundable registration fee of \$2 shall be paid for each acre registered for open field burning and \$1 shall be paid for each acre registered for propane flaming. The registration fees for open field burning and propane flaming shall be paid into separate designated accounts. A complete registration (permit application) shall consist of a fully executed registration form, map and fee. Acreage registered by April 1 may be issued a burn permit if:

(A) Allocation is available; and

(B) The initial registration fee account has a sufficient balance.

(b) Registration of open field burning and propane flaming acreage after April 1 of each year shall require the prior approval of the Department and an additional \$1 per acre late registration fee. The late registration fee shall not be charged if the late registration is not due to the fault of the registrant or one under the registrant's control;

(c) Copies of all registration forms and fees shall be forwarded to the Department promptly by the permit agent. Registration map materials shall be made available to the Department at all times for inspection and reproduction;

(d) The Department shall act on any registration application within 60 days of receipt of a completed application. The Department may deny or revoke any registration application which is incomplete, false or contrary to state law or this

Division;

(e) The grower registrant shall insure the information presented on the registration form and map is complete and accurate.

(2) Permits:

(a) Permits for open field burning, propane flaming, or stack or pile burning shall be issued by the Department, or its authorized permit agent, to the grower registrant in accordance with the established procedures of the Department, and the times, locations, amounts and other restrictions set forth by the Department or this Division;

(b) A fire permit from the local fire permit issuing agency is also required for all open burning pursuant to ORS 477.515, 477.530, 476.380, 478.960;

(c) A valid open field burning permit shall consist of:

(A) An open field burning permit issued by the Department which specifies the permit conditions in effect at all times while burning and which identifies the acreage specifically registered and annually allocated for burning;

(B) A validation number issued by the local permit agent on the day of the burn identifying the specific acreage allowed for burning and the date and time the permit was issued.

(d) A valid propane flaming permit shall consist of:

(A) A propane flaming permit issued by the Department which specifies the permit conditions in effect at all times while flaming and which identifies the acreage specifically registered and annually allocated for propane flaming;

(B) A validation number issued by the local permit agent identifying the specific acreage allowed for propane flaming and the date and time the permit was issued.

(e) A valid stack or pile burning permit shall consist of the name of the responsible person and date the permit was issued, and shall specify the acreage and location authorized;

(f) Each responsible person open field burning, propane flaming, or stack or pile burning shall pay a per acre burn fee within ten days of the date the permit was issued. The fee shall be:

(A) \$8 per acre sanitized by open field burning;

(B) \$2 per acre sanitized by propane flaming;

(C) For all acreage burned in stacks or piles:

(i) \$2 per acre from January 1, 1992 to December 31, 1997;

(ii) \$4 per acre burn fee in 1998;

(iii) \$6 per acre burn fee in 1999;

(iv) \$8 per acre burn fee in 2000; and

(v) \$10 per acre burn fee in 2001 and thereafter.

(D) For grass seed and cereal grain residue from previous seasons, broken bales, or fields where a portion of straw was removed using usual or standard baling methods, the acreage actually burned shall be estimated and the same per acre fee as imposed in paragraph (C) of this subsection shall be charged.

The estimated acreage shall be rounded to the nearest whole acre.

(g) Burning permits shall at all times be limited by and subject to the burn schedule and other requirements or conditions announced or set forth by the Department;

(h) No person shall issue burning permits for open field burning, propane flaming,

or stack or pile burning of:

(A) More acreage than the amount sub-allocated annually to the District by the Department pursuant to OAR 266-0060(2);

(B) Priority or fire safety buffer zone acreage located on the upwind side of any city, airport, Interstate freeway or highway within the same priority area or buffer zone.

(i) It is the responsibility of each local permit issuing agency to establish and implement a system for distributing open field burning, propane flaming, or stack or pile burning permits to individual grower registrants when burning is authorized, provided that such system is fair, orderly and consistent with state law, this Division and any other provisions set forth by the Department.

(3) Fees:

(a) Permit agents shall collect, properly document, and promptly forward all required registration, late registration fees, and burn fees to the Department;

(b) All fees shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund and shall be appropriated pursuant to ORS468A.550 to 468A.620.

(4) Records:

(a) Permit agents shall at all times keep proper and accurate records of all transactions pertaining to registrations, permits, fees, allocations, and other matters specified by the Department. Such records shall be kept by the permit agent for a period of at least five years and made available for inspection by the appropriate authorities;

(b) Permit agents shall submit to the Department on specially provided forms weekly reports of all acreage burned in their permit jurisdictions. These reports shall cover the weekly period of Monday through Sunday, and shall be mailed and post-marked no later than the first working day of the following week.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-266-0060 ACREAGE LIMITATIONS, ALLOCATIONS**

(1) Limitation of Acreage:

(a) Except for acreage and residue open field burned pursuant to OAR 340266-0100 through OAR 340-266-0130, the maximum acreage to be open field burned annually in the Willamette Valley under this Division shall not exceed:

(A) 120,000 acres for 1994 and 1995;

(B) 100,000 acres for 1996 and 1997; and

(C) 40,000 acres for 1998 and thereafter.

(b) Notwithstanding the annual limitations, up to 25,000 acres of steep terrain and species identified by the Director of Agriculture may be open field burned or propane flamed annually and shall be considered outside the limitation;

(c) Other limitations on acreage allowed to be open field burned are specified in OAR 340-266-0070(7), 340-266-0080(2), 340-266-0090(1) and 340-266-0100(1);

(d) The maximum acreage to be propane flamed annually in the Willamette Valley under this Division shall not exceed 75,000 acres;

(e) Other limitations on acreage allowed to be propane flamed are specified in OAR340-266-0120.

(2) Allocation of Acreage:

- (a) In the event that total registration as of April 1 is less than or equal to the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a) and (d) of this rule, the Department shall sub-allocate to each grower registrant and each district (subject to daily burn authorization) 100 percent of their respective registered acreage;
- (b) In the event that total registration as of April 1 exceeds the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a) of this rule, the Department may sub-allocate to growers on a pro rata share basis not more than 100 percent of the maximum acreage limit, referred to as “grower allocation”. In addition, the Department shall sub-allocate to each respective fire district, its pro rata share of the maximum acreage limit based on acreage registered within the district, referred to as “district allocation”;
- (c) To ensure optimum permit utilization, the Department may adjust fire district allocations;
- (d) Transfer of allocations for farm management purposes may be made within and between fire districts and between grower registrants on a one-in/one-out basis under the supervision of the Department. The Department may assist grower registrants by administering a reserve of released allocation for first come-first served utilization.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-266-0070 DAILY BURNING AUTHORIZATION CRITERIA**

As part of the Smoke Management Program provided for in ORS 468A.590, the Department shall set forth the types and extent of open field burning, propane flaming, and stack and pile burning to be allowed each day according to the provisions established in this section and this Division:

- (1) During the active burning season and on an as needed basis, the Department shall announce the burning schedule over the burning radio network operated specifically for this purpose. The schedule shall specify the times, locations, amounts and other restrictions in effect for open field burning, propane flaming, and stack and pile burning. The Department shall notify the State Fire Marshal of the burning schedule for dissemination to appropriate Willamette Valley agencies.
- (2) Prohibition conditions:
  - (a) Prohibition conditions shall be in effect at all times unless specifically determined and announced otherwise by the Department;
  - (b) Under prohibition conditions, no permits shall be issued and no open field burning shall be conducted in any area except for individual burns specifically authorized by the Department on a limited extent basis. Such limited burning may include field-by-field burning, preparatory burning, or burning of test fires, except that:
    - (A) No open field burning shall be allowed:
      - (i) In any area subject to a ventilation index of less than 10.0;
      - (ii) In any area upwind, or in the immediate vicinity, of any area in which, based upon real-time monitoring, a violation of federal or state air quality standards is projected to occur.
    - (B) Only test-fire burning may be allowed:

- (i) In any area subject to a ventilation index of between 10.0 and 15.0, inclusive, except for experimental burning specifically authorized by the Department pursuant to OAR 340-266-0100;
- (ii) When relative humidity at the nearest reliable measuring station exceeds 50 percent under forecast northerly winds or 65 percent under forecast southerly winds.

(3) Marginal conditions:

- (a) The Department shall announce that marginal conditions are in effect and open field burning is allowed when, in its best judgment and within the established limits of this Division, the prevailing atmospheric dispersion and burning conditions are suitable for satisfactory smoke dispersal with minimal impact on the public, provided that the minimum conditions set forth in paragraphs (2)(b)(A) and (B) of this rule are satisfied;
- (b) Under marginal conditions, permits may be issued and open field burning may be conducted in accordance with the times, locations, amounts, and other restrictions set forth by the Department and this Division.

(4) Hours of burning:

- (a) Burning hours shall be limited to those specifically authorized by the Department each day and may be changed at any time when necessary to attain and maintain air quality;
- (b) Burning hours may be reduced by the fire chief or his deputy, and burning may be prohibited by the State Fire Marshal, when necessary to prevent danger to life or property from fire, pursuant to ORS 478.960.

(5) Locations of burning:

- (a) Locations of burning shall at all times be limited to those areas specifically authorized by the Department; except that
- (b) No priority or fire safety buffer zone acreage shall be burned upwind of any city, airport, Interstate freeway or highway within the same priority area or buffer zone;

(c) No south Valley priority acreage shall be burned upwind of the Eugene-Springfield non-attainment area.

(6) Amounts of burning:

- (a) To provide for an efficient and equitable distribution of burning, daily authorizations of acreages shall be issued by the Department in terms of single or multiple fire district quotas. The Department shall establish quotas for each fire district and may adjust the quotas of any district when conditions in its judgment warrant such action;
- (b) Unless otherwise specifically announced by the Department, a one quota limit shall be considered in effect for each district authorized for burning;
- (c) The Department may issue more restrictive limitations on the amount, density or frequency of burning in any area or on the basis of crop type, when conditions in its judgment warrant such action.

(7) Limitations on burning based on air quality:

- (a) The Department shall establish the minimum allowable effective mixing height required for burning based upon cumulative hours of smoke intrusion in the Eugene-Springfield area as follows;
- (b) Except as provided in paragraph (C) of this subsection, burning shall not be permitted whenever the effective mixing height is less than the minimum

allowable height specified in **Table 1**, and by reference made a part of this Division;

(c) Notwithstanding the effective mixing height restrictions of paragraph (b) of this subsection, the Department may authorize burning of up to 1,000 acres total per day for the Willamette Valley, consistent with smoke management considerations and this Division.

(8) Limitations on burning based on rainfall:

(a) Open field burning and propane flaming shall be prohibited in any area for one drying day (up to a maximum of four consecutive drying days) for each 0.10 inch increment of rainfall received per day at the nearest reliable measuring station;

(b) The Department may waive the restrictions of subsection (a) of this section when dry fields are available as a result of special field preparation or condition, irregular rainfall patterns, or unusually high evaporative weather condition.

(9) Other discretionary provisions and restrictions:

(a) The Department may require special field preparations before burning, such as, but not limited to, mechanical fluffing of residues, when conditions in its judgment warrant such action;

(b) The Department may designate specified periods following permit issuance within which time active field ignition must be initiated and/or all flames must be actively extinguished before said permit is automatically rendered invalid;

(c) The Department may designate additional areas as priority areas when conditions in its judgment warrant such action.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-266-0080 BURNING BY PUBLIC AGENCIES (TRAINING FIRES)**

Open field burning on grass seed or cereal grain acreage by or for any public agency for official purposes, including the training of fire-fighting personnel, may be permitted by the Department on a prescheduled basis consistent with smoke management considerations and subject to the following conditions:

(1) Such burning must be deemed necessary by the official local authority having jurisdiction and must be conducted in a manner consistent with its purpose.

(2) Such burning must be limited to the minimum number of acres and occasions reasonably needed but in no case exceed 35 acres per fire or occasion.

(3) The responsible person shall comply with the provisions of OAR 340-266-0040 through 340-266-0060.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-266-0090 PREPARATORY BURNING**

The Department encourages the preparatory burning of portions of selected problem fields to reduce or eliminate potential fire hazards and safety problems and to expedite the subsequent burning of the field. Such burning shall be consistent with smoke management considerations and subject to the following conditions:

(1) Each responsible person shall limit the acres burned to the minimum necessary to eliminate potential fire hazards or safety problems but in no case exceed five acres for each burn unless specifically authorized by the Department.

(2) Each responsible person conducting preparatory burning shall employ backfiring burning techniques.

- (3) Each responsible person conducting preparatory burning shall comply with the provisions of OAR 340-266-0040 through 340-266-0060 and OAR 837-110-0010 through 837-110-0090.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-266-0100 EXPERIMENTAL BURNING**

The Department may allow open field burning for demonstration or experimental purposes pursuant to the provisions of ORS 468A.620, consistent with smoke management considerations and subject to the following conditions:

- (1) Acreage experimentally open field burned, propane flamed, or stack or pile burned shall not exceed 1,000 acres annually.
- (2) Acreage experimentally burned shall not apply to the district allocation or to the maximum annual acreage limit specified in OAR 340-266-0060(1)(a) or (d).
- (3) Such burning is exempt from the provisions of OAR 340-266-0070 but must comply with the provisions of OAR 340-266-0040 and 340-266-0050, except that the Department may elect to waive all or part of the per acre open field burning or propane flaming fee.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-266-0110 EMERGENCY BURNING CESSATION**

Pursuant to ORS 468A.610 and upon finding of extreme danger to public health or safety, the Commission may order temporary emergency cessation of all open field burning in any area of the Willamette Valley.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-266-0120 PROPANE FLAMING**

- (1) The use of propane flammers, mobile field sanitizing devices, and other field sanitation methods specifically approved by the Department are subject to the following conditions:
  - (a) The field shall first be prepared as follows:
    - (A) Either the field must have previously been open burned and the appropriate fees paid; or
    - (B) The field stubble must be flail-chopped, mowed, or otherwise cut close to the ground and the loose straw removed so the remaining stubble will not sustain an open fire.
  - (b) Propane flaming operations shall comply with the following criteria:
    - (A) Unless otherwise specifically restricted by the Department propane flaming may be conducted only between the hours of 9 a.m. and sunset between June 1 and August 31 of each year and (9 a.m. to 1/2 hour before sunset between September 1 and October 14 of each year;
    - (B) Propane flammers shall be operated in overlapping strips, crosswise to the prevailing wind, beginning along the downwind edge of the field;
    - (C) No person shall cause or allow propane flaming which results in sustained open fire. Should sustained open fire create excessive smoke all flame and smoke sources shall be immediately and actively extinguished;

(D) No person shall cause or allow any propane flaming which results in visibility impairment on any Interstate highways or roadways specified in OAR 837-110-0080(1) and (2). Should visibility impairment occur, all flame and smoke sources shall be immediately and actively extinguished;

(E) The acreage must be registered and permits obtained pursuant to OAR340-266-0050;

(F) No person shall cause or allow propane flaming when either the relative humidity at the nearest reliable measuring station exceeds 65 percent or the surface winds exceed 15 miles per hour;

(G) All regrowth over eight inches in height shall be mowed or cut close to the ground and removed.

(c) All propane flaming operations shall be conducted in accordance with the State Fire Marshal's safety requirements specified in OAR 837-110-0100 through 837-110-0160;

(d) No person shall cause or allow to be initiated or maintained any propane flaming or other mobile fire sanitation methods not certified by the Department on any day or at any time if the Department has determined and notified the State Fire Marshal that propane flaming is prohibited because of adverse meteorological or air quality conditions.

(2) The Department may issue restrictive limitations on the amount, density or frequency of propane flaming or other mobile fire sanitation methods in any area when meteorological conditions are unsuitable for adequate smoke dispersion, or deterioration of ambient air quality occurs.

*State effective: 10/14/99; EPA effective: 3/24/2003:*

### **340-266-0130 STACK BURNING**

The open burning of piled or stacked residue from perennial or annual grass seed or cereal grain crops used for seed production is allowed subject to the following conditions:

- (1) No person shall cause or allow to be initiated or maintained any stack or pile burning on any day or at any time if the Department has notified the State Fire Marshal that such burning is prohibited because of meteorological or air quality conditions.
- (2) No person shall cause or allow stack or pile burning of any grass seed or cereal grain residue unless said residue is dry and free of all other combustible and non-combustible material.
- (3) Each responsible person shall make every reasonable effort to promote efficient burning, minimize smoke emissions, and extinguish any stack burning which is in violation of any rule of the Commission.
- (4) No stack or pile burning shall be conducted within any State Fire Marshal buffer zone "non-combustible ground surface" area (e.g., within 1/4 mile of Interstate I-5, or 1/8 mile of any designated roadway), as specified in OAR 837-110-0080.
- (5) The acreage must be permitted pursuant to OAR 340-266-0050.
- (6) Unless otherwise specifically agreed by the parties, after the straw is removed from the fields of the grower, the responsibility for the further disposition of the straw, including burning or disposal, and payment of the appropriate fees, shall be upon the person who bales, removes, controls, or is in possession of the straw.

TABLE 1 (OAR 340-266-0070)	
MINIMUM ALLOWABLE EFFECTIVE MIXING HEIGHT REQUIRED FOR BURNING BASED UPON THE CUMULATIVE HOURS OF SMOKE INTRUSION IN THE EUGENE-SPRINGFIELD AREA	
Cumulative Hours of Smoke Intrusion in the <u>Eugene- Springfield Area</u>	Minimum Allowable Effective <u>Mixing Height</u> (feet)
0 - 14	No minimum
15 - 19	4,000
20 - 24	4,500
25 and greater	5,500

*State effective: 10/14/99; EPA effective: 3/24/2003*

## DIVISION 268

### EMISSION REDUCTION CREDITS

#### SIP - OREGON - 340-268-0010 APPLICABILITY

This division applies to all sources in the state.

*State effective: 10/14/99; EPA effective: 3/24/2003*

#### 340-268-0020 DEFINITIONS

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

*State effective: 10/14/99; EPA effective: 3/24/2003*

#### 340-268-0030 EMISSION REDUCTION CREDITS

Any person who reduces emissions by implementing more stringent controls than required by a permit or an applicable regulation may create an emission reduction credit. Emission reduction credits must be created and banked within two years from the time of actual emission reduction.

(1) Creating Emission Reduction Credits. Emission reductions can be considered credits if all of the following requirements are met:

(a) The reduction is permanent due to continuous overcontrol, curtailment or shutdown of an existing activity or device.

(b) The reduction is in terms of actual emissions reduced at the source. The amount of the creditable reduction is the difference between the contemporaneous (any consecutive 12 calendar month period during the prior 24 calendar months) pre-reduction actual (or allowable, whichever is less) emissions and the post-reduction allowable emissions from the subject activity or device.

(c) The reduction is either:

(A) Enforceable by the Department through permit conditions or rules adopted specifically to implement the reduction that make increases from the activity or device creating the reduction a violation of a permit condition; or

(B) The result of a physical design that makes such increases physically impossible.

(d) The reduction is surplus. Emission reductions must be in addition to any emissions used to attain or maintain NAAQS in the SIP.

(e) Sources in violation of air quality emission limitations may not create emission reduction credits from those emissions that are or were in violation of air quality emission limitations.

(2) Banking of Emission Reduction Credits.

(a) The life of emission reduction credits may be extended through the banking process as follows:

(A) Emission reduction credits may be banked for ten years from the time of actual emission reduction.

(B) Requests for emission reduction credit banking must be submitted within the 2 year (24 calendar month) contemporaneous time period immediately following the actual emission reduction. (The actual emission reduction occurs when the airshed experiences the reduction in emissions, not when a permit is issued or otherwise changed).

(b) Banked emission reduction credits are protected during the banked period from rule required reduction, if the Department receives the emission reduction credit banking request before the Department submits a notice of a proposed rule or plan development action for publication in the Secretary of State's bulletin. The Commission may reduce the amount of any banked emission reduction credit that is protected under this section, if the Commission determines the reduction is necessary to attain or maintain an ambient air quality standard.

(c) Emission reductions must be in the amount of ten tons per year or more to be creditable for banking, except as follows:

(A) In the Medford-Ashland AQMA, PM10 emission reductions must be at least 3 tons per year.

(B) In Lane County, LRAPA may adopt lower levels.

(d) Emission reduction credits will not expire pending the Department taking action on a timely banking request unless the 10 year period available for banking expires.

- (3) Using Emission reduction Credits: Emission reduction credits may be used for:
- (a) Netting actions within the source that generated the credit, through a permit modification; or
  - (b) Offsets pursuant to the New Source Review program (OAR 340 division 224) and the Net Air Quality Benefit requirements of OAR 340-225-0090.
- (4) Unused Emission Reduction Credits
- (a) Emission reduction credits that are not used, and for which the Department does not receive a request for banking within the contemporaneous time period, will become unassigned emissions for purposes of the Plant Site Emission Limit (PSEL).
  - (b) Emission Reduction credits that are not used prior to the expiration date of the credit will revert to the source that generated the credit and will be treated as unassigned emissions for purposes of the PSEL pursuant to OAR 340-222-0045.
- (5) Emission Reduction Credit (ERC) Permit
- (a) The Department tracks ERC creation and banking through the permitting process. The holder of ERCs must maintain either an ACDP, Title V permit, or an ERC Permit.
  - (b) The Department issues ERC Permits for anyone who is not subject to the ACDP or Title V programs that requests an ERC or an ERC to be banked.
  - (c) An ERC permit will only contain conditions necessary to make the emission reduction enforceable and track the credit.
  - (d) Requests for emission reduction credit banking must be submitted in writing to the Department and contain the following documentation:
    - (A) A detailed description of the activity or device controlled or shut down;
    - (B) Emission calculations showing the types and amounts of actual emissions reduced, including pre-reduction actual emission and post-reduction allowable emission calculations;
    - (C) The date or dates of actual reductions;
    - (D) The procedure that will render such emission reductions permanent and enforceable;
    - (E) Emission unit flow parameters including but not limited to temperature, flow rate and stack height;

(F) Description of short and long term emission reduction variability (if any).

(e) Requests for emission reduction credit banking must be submitted to the Department within two years (24 months) of the actual emissions reduction. The Department must approve or deny requests for emission reduction credit banking before they are effective. In the case of approvals, The Department issues a permit to the owner or operator defining the terms of such banking. The Department insures the permanence and enforceability of the banked emission reductions by including appropriate conditions in permits and, if necessary, by recommending appropriate revisions to the State Implementation Plan.

(f) The Department provides for the allocation of emission reduction credits in accordance with the uses specified by the holder of the emission reduction credits. The holder of ERCs must notify the Department in writing when they are transferred to a new owner or site. Any use of emission reduction credits must be compatible with local comprehensive plans, statewide planning goals, and state laws and rules.

*State effective: 7/1/01; EPA effective: 3/24/2003*